SUPREME COURT
FILED
061174 FEB 22 2007
OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

KAREN HORWITZ
Petitioner, Pro Se

v.

ILLINOIS STATE BOARD OF EDUCATION, STEPHEN B. RUBIN, AND BOARD OF EDUCATION OF AVOCA SCHOOL DISTRICT NO. 37, COOK COUNTY, ILLINOIS
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

Karen Horwitz
Petitioner, Pro Se
25 E. Superior St.
#2904
Chicago, Illinois 60611
(312) 397-1940

QUESTIONS PRESENTED

Illinois School Code mandates "continuous service of good teachers" for the public's sake and hence governs procedures with which the Illinois State Board of Education may hold termination hearings for tenured teachers charged by their School Boards with insubordination; hearings, though, must comply with the Due Process Clause under the 14th Amendment. Did the State err in finding the following issues inapplicable to due process and appropriate federal law? The questions presented are:

I. Whether School Boards, in their supervisory capacity, have a duty to protect their teachers and students from damages caused by discriminatory or retaliatory orders, and whether School Boards have a duty to investigate complaints of discrimination and retaliation to ensure that orders are not damaging, and that insubordination charges against teachers resulting in termination recommendations are not based on orders that infringe upon statutorily protected rights.

II. Whether States have a duty to hold termination hearings that protect teachers' constitutionally protected rights under the 1st Amendment Right to Free Speech after teachers speak adversely against their School Board, and whether such hearings guarantee due process to protect teachers' statutorily protected rights after filing a complaint with the U.S. Equal Employment Opportunity Commission, (EEOC)

III. Whether teacher termination hearings that bar the ability to consider and corroborate evidence of discrimination and retaliation by School Boards, and thus damage teachers who have participated in protected activities, and that show conflict amongst the district courts with interpretations of law that depart far from the accepted and usual course of statutory proceedings to find cause, and therein change the mandate of the Illinois School Code, show an abuse of discretion on the part of the Hearing Officer and fail to comply with Due Process under the 14th Amendment.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

CASES.....iii

CONSTITUTIONAL AUTHORITIES.....vii

STATUTES.....vii

PETITION FOR WRIT OF CERTIORARI.....1

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL PROVISIONS INVOLVED...1

I. STATEMENT OF THE CASE.....1

II. REASONS FOR GRANTING THE PETITION..3

A. RETALIATORY DISCHARGE.....3

B. VIOLATIONS OF 1ST AND 14TH AMENDMENT.....14

III. CONCLUSION.....28

APPENDIX TABLE OF CONTENTS
Following Petition.....ix

TABLE OF AUTHORITIES

Cases

Horwitz v. Bd of Educ. of Avoca School, 260 F.3d 602 (7th Cir.2000) 3, 24

Burlington Northern v. White, ___U.S.___, 126 S. Ct. 2405, 165 L .Ed. 2d 345 (2006)...3, 4, 7, 8, 11, 13, 18, 20, 25, 26

McKennon v. Nashville, 513 U.S. 352 (1995).....4, 7, 8, 10, 11, 12, 17, 24

McGee v. Procter & Gamble Distributing Co.. 445 F. Supp.2d 481 (E.D.Pa. 2006).....4, 21, 24, 25

Board of Regents, 408 U.S. 564 (1972)..... 4, 9, 14, 16, 17, 24

Limbach v. Hooven 466 U.S. 353 (1984).....4

Intern. Soc. For Krishna v. Rochford, 585 F.2d 266 (1968) 5, 11, 12, 13, 15, 24, 26

Bd. of Ed. of CCSD No. 54 v. Spangler, 328 Ill. App.3d 747 (2002)..... .....6, 12,13, 20

Jorman v. Veterans Admin., 579 F. Supp. 1407 (1984).....6, 19

Miller v. Retirement Bd. Policemen's Annu., 329 Ill. App.3d 589 (2002)..... 8

BOE of Round Lake Area Schools v. ISBE, 292 Ill. App. 3d 101 (1997).....8, 10, 11, 19, 28

Hazelton v, Zoning Bd of Appeals, Etc. 48 Ill. App.3d 348 (1977).....8, 9, 16

BOE of the City of Chicago v. Denise Weed, 281 Ill. App. 3d 1010(1996).....10, 25

Sylvester v. SOS Children's Villages Ill. Inc, 453 F.3d.900 (7th Cir. 2006) 9,13, 17, 21, 26

Dusanek v. Hannon, 677 F.2d 538 (1982)..... .9, 10

Grayned v City of Rockford, 408 U.S.104 (1972)... ..... 11, 25, 28, 29

Chemetco, Inc. v. Ill. Pollution Control, 140 Ill. App.3d 283 (1986)..... 11

Buchna v. ISBE, 342 Ill.App.3d 934 (2003) 2, 21, 22, 23

M.I.G. Investments, Inc. v. Environmental Protection. Agency, 122 Ill.2d 392(1988)... .....12, 13

Balmoral Racing Club v. Illinois Racing Board, 151 Ill.2d 367, 410 (1992).....13, 14

Gigger v. Board of Fire & Police Com'rs. of E. St. Louis, 23 Ill.App.2d 433 (1960)..... .....14, 21

Rankin v. McPherson 483 U.S. 378 (1987).....14, 15, 18

Connick v. Myers, 461 U.S. 138, 148 (1983).....15

Pickering v. Bd of Educ., 391 U.S. 563,564, (1968).....15, 16

Givhan v. Western Line Consol. Sch. Dist., 439 U.S. 410 (1979).....15

Vargas-Harrison v. Racine USD, 272 F.3d 964 (7th Cir. 2001).....17

Caviness v. BOE. of Ludlow CUSD No. 2, 59 Ill. App. 3d 28 (1978).....17, 23

Burger v. Lutheran General Hosp. 198 Ill. 2d 21(2001).... 17

Zuber v. Ill. Power Co., 135 Ill.2d 407 (1990)..... 19, 22

People v. Badoud, 122 Ill.2d 50 (1988)..... 19

Levenstein v. Salafsky et al., 164 F.3d 345
(7th Cir. 1998).....20

Wainscott v. Henry, 315 F. 3d 844
(7th Cir. 2002).....20

Bd. of Educ. of Chicago v. State Bd of Educ., 113
Ill.2d 173 (1986)..... 21

Stull v. Depart. of Child, & Family Serv., 239 Ill.
App.3d 325 (1992)..... .....21, 22

Stun v. Depart. of Child, & Family Serv., 239 Ill.
App.3d 325 (1992)..... 22

D'Acquisto v Washington, 640 F.Supp. 594
(N.D.Ill. 1986)..... 22

Jones v. General Superintendent of Schools, 58 Ill.
App.3d 504 (1978)..... .....23, 24, 25

Geddes v. Mill Creek Country Club, 196 Ill.302
(2001).....24, 25, 26

In Re Consolidated Objections to Tax Levies, 193 Ill.2d 490
(2000).....24

Citizens Environment v. Ill. Pollution Bd. 152 Ill.
App.3d 105(1987.....24

Byron *Com.Un. Sch. Dist. v. Dunham-Bush*, 215 Ill.
App. 3d 343(1991) 25

In re Lieberman, 201 Ill. 2d 300 (2002).....26

Greer v Ill. Housing Author., 122 Ill.2d 462(1988).....26

Dred Scott v. Sandford, 60 U.S. 393 (1857).....27

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)..... 27

Schaffer v. Weast, 546 U. S. 49, 126 S.Ct. 528 (2005).....29

Settlegoode v. Portland Public Schools, 371 F.3d 503 (9th Cir. 2004)... 30

Moser v. Bret Harte Union High School, 366 Fed. Supp.2d 944 (E.D.Cal. 2005).....30

Constitutional Authorities

Due Process Clause under the
14th Amendment, U.S. Constitution 1, 3, 4, 8, 9, 12,
.....13, 14, 15, 16, 17, 19, 20, 22, 25, 26, 27

Free Speech Clause under the
1st Amendment, U.S. Constitution.....1, 2, 3, 14, 15, 16, 17,
.....18, 19, 24, 28

Illinois Constitution, Article I,.....24, 29

Bill of Rights § 1., § 2., § 4., § 12..1

Statutes

Age Discrimination in Employment Act of 1967 (ADEA) 29 U.S.C. § 623, under the U.S. Equal Employment Opportunity Commission (EEOC)
29 U.S.C. § 623 (a) & 29 U.S.C. § 623 (d)
.....2, 4, 7, 9, 10, 12, 21

Title VII of the Civil Rights Act of 1964 (Title VII)
Pub.L.88-352, §704, 78 Stat. 257, as amended, 42 U.S.C.
§2000e-2(a), Sec 2000e-3(a)..... 4

(105 ILCS 5/) School Code 2, 3, 5, 6,
.....9, 11, 12, 13, 17, 20, 21, 22, 23, 24, 25, 26

(105 ILCS 5/34-85) Teacher Terminations..... 3, 22, 23

(105 ILCS 5/24-5) Fitness for Duty.....17

(105 ILCS 5/10-20.9a). Final Grades.....11

(105 ILCS 5/24A-1) Teacher Evaluations.....12, 21

(105 ILCS 5/24A-5) Teacher Remediation 12, 21

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that this Honorable Court will issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

The opinion of the highest State court to review the merits, Illinois Appellate Court, First District, appears at **Appendix B** to the petition and is Unpublished. Circuit Court Judge O'Brien's Memorandum Opinion and Judge Agran's Memorandum Opinion appear at **Appendix C** to the petition. Hearing Officer Stephen B. Rubin's Dismissal Opinion appears at **Appendix D** to the petition.

JURISDICTION

The date on which Illinois Supreme Court decided Petitioner's case was November 29, 2006. A copy of that decision appears at **Appendix A.** The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Due Process Clause under the 14th Amendment,
U.S. Const., Free Speech Clause under the 1st Amendment,
Illinois Const., Article I, Bill of Rights § 1., § 2., § 4., § 12.

I. STATEMENT OF THE CASE

Petitioner was a well-liked (V.29RC7240) substitute teacher/ aide at Avoca School District #37 ("Avoca") **1989-1993**. Principal Rak hired her as a full time teacher fall of **1993** at which time Dr. Venette Biancalana ("Principal"), a first year principal, replaced Rak. Principal began creating problems for older teachers (p12-17, 36f). **11/96** After witnessing and enduring discrimination for 3 years, Petitioner complained to Supt. Sloan ("Supt.") about it; he threatened to make her life miserable if she escalated an age complaint (V.4RC879L16-23). **4/97** Petitioner and 3 older teachers sought legal advice to end Principal's discrimination (p12-17, 36f). **5/12/97** Petitioner hired same attorney to ask the Avoca School Board ("Board") to protect her from discriminatory acts (V.30R

C7434-9). Board failed to respond. After 5 months, Petitioner made discrimination public in Petitioner's article ("Article") submitted to a local paper. **10/15/97** Board created animosity against Petitioner (V.14RC3421L13-24)(V.11RC2502L4-24) by holding district-wide meetings to condemn Article (p38-42f) that described discriminatory treatment of older teachers and its harm to children (p3-4, 12-17, 43-48f). **1/19/98** Petitioner begged Board to investigate and end the retaliation (V.27RC6653-V.28RC6875). **2/16/98** Board refused (p49-50f) (V.27RC6654-9) (V.14RC3418L14-19L23). Principal rated Petitioner "excellent" as a professional/teacher before her speech and EEOC age discrimination complaint (p3-4, 6-7f) (V.24RC5991) (V.30RC7268; 7360; 7369; 7455). **4/20/98** Board remediated her speech expressing distress about Board's refusal to investigate retaliation (V.24RC6148-51).

7/15/98 Board ordered Petitioner to undergo an evaluation by its psychiatrist. Petitioner requested an unbiased doctor (V.31 RC7605-10); Board refused (V.36RC8773-4)(V.R C3422L1-17). **10/16/98** Petitioner filed a federal lawsuit for protection from discriminatory and retaliatory orders under Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623 (a) & (d) ("ADEA") and a complaint under the Free Speech Clause of the 1st Amendment (V.35RC8530). On **4/23/99**, without investigating whether the administrators' charges were retaliatory (p11AB, 49-50f) (V.37RC9144L13-21), Board voted to fire Petitioner, not the three other teachers who did not file ADEA charges. From **5/15/00-8/16/00**, despite Petitioner's objections (p5-6, 25-29f), Hearing Officer Stephen Rubin ("Officer") held a termination hearing that failed to investigate retaliation over Petitioner's lawsuit or her adverse speech. Officer declared the following: "Is it appropriate for a teacher to make certain demands, even if she is picked on (p5f-L24-1)?" "But I will not hear, and you may take this up to as many courts as you wish, I will not hear a trial about the competence, treatment, or anything else of Dr. Biancalana or Dr. Sloan (p6fL8-11)." Board testified it ignores evaluations and complaints (p11A, Bf). *Illinois School Code (105 ILCS 5/).* ("*Code*") mandated a decision on the hearing by **10/2000**; Officer shirked his duty. The Illinois

State Board of Education, ("ISBE") allowed the process to drag on saying it could do nothing (V.37RC9116-8), ignoring *Code§34-85*: "If a hearing officer fails to render a decision within 3 months after the hearing is declared closed, the State Board of Education shall provide the parties with a new list of prospective, impartial hearing officers (p4g)." Petitioner contacted public officials. **6/05/02** After the media called ISBE, it threatened to sue Officer (V.35RC8558-8) for failing to decide. **6/29/02** Officer decided 19 months late, admitting he had no excuse (V.35RC8512). Officer affirmed the firing based on insubordination using "higher authority" rather than a "reasonable" standard (p85d). Officer held her speech insubordinate (p19f), doing no 1st Amendment balance (p69-70d). Petitioner preserved her record (p12-17, 25-29, 36f).

6/12/03 Petitioner appealed that unconstitutional construal of *Code* violated her Due Process rights under the 14th Amendment, her right for protection from a retaliatory discharge, and her right to protected speech under the 1st Amendment to the Circuit Court ("Cir. Ct."). It found Officer's construal discretionary (p2c) and that her disruptive speech warranted termination with no examination since *Horwitz v. Bd of Educ. of Avoca School*, 260 F.3d 602 (7th Cir. 2000) was an identical cause of action, applying res judicata (p3c). **10/1/04** Petitioner appealed to the Illinois Appellate Court First District ("App. Ct."), arguing res judicata was applied in error as this case involves different parties and a different cause of action (p14-18e). It declined 1st Amendment and retaliatory discharge claims (p22-3b) and held broad discretion. **11/29/06** The Illinois Supreme Court entered a denial to hear this case (p.1a). Petitioner preserved her rights to appeal violations of federal law (p1-20e).

II. REASONS FOR GRANTING THE PETITION

A. RETALIATORY DISCHARGE UNLAWFUL

The App. Ct.'s decision in this case directly conflicts with federal statutes and this Court's holding in *Burlington Northern v. White*, ___U.S.___, 126 S.Ct. 2405, 165 L.Ed.2d 345, 352 (2006): "The anti-retaliation provision seeks to

prevent employer interference with 'unfettered access' to Title VII's remedial mechanisms by prohibiting employer actions that are likely to deter discrimination victims from complaining to the EEOC, the courts, and employers." In *Burlington*, this Court embraced the remedies available under federal law that are necessary to deter unlawful harassment and intentional discrimination in the workplace. *McKennon v. Nashville*, 513 U.S. 352, 358 (1995) said: "ADEA and Title VII share common substantive features and also a common purpose: 'the elimination of discrimination in the workplace.'" States must work with the courts in enforcing these EEOC regulated statutes that govern one's inalienable rights. This Court cannot allow State procedures to exclude an examination of retaliatory discharge in light of these statutes and rulings or it renders federal law moot. Despite proper presentation (p9e), Illinois Courts evaded Petitioner's retaliation claim, ruling in direct opposition to *McKennon, 358, Burlington, 353,* and *McGee v. Procter & Gamble Distributing Co.* 445 F. Supp.2d 481, 490 (E.D.Pa. 2006), which held that an employee who had engaged in a protected employee activity is entitled to due process to determine if his employer had acted in a way that "well might dissuade" employees from pursuing their statutorily protected activity. The Illinois Courts chose to ignore these rulings when it denied Petitioner due process to determine if her employer had acted in a way that "well might dissuade" her, given her participation in a protected employee activity and guaranteed due process rights as a tenured teacher. (*Board of Regents*, 408 U.S. 564, 570 (1972)(due process guaranteed) *Limbach v. Hooven* 466 U.S. 353, 362 (1984) held: "We are concerned with federal issues and a contention that a state court disregarded a federal constitutional ruling of this Court."

This case epitomizes this concern. It involves administrators who evaded the law against retaliatory discharge by setting her up to fail and, with Board's help, hired attorneys who duped the lower courts into believing that charges against her were not a pattern of retaliatory harassment that, in fact, upset her deeply due to the impact on children. Officer, who believes retaliatory orders are irrelevant to deciding cause to

fire teachers, helped evade federal law. Officer created a record that turned a victim of retaliation from engaging in a protected activity into the cause of conflict, and misled courts into finding the record adequate despite disturbing views including (p5-6, 12-17, 36f)(V.16RC3936L14-3938L19) and:

> "The discrimination issues are not before me, as I understand my charge. That is national origin, age, sex, et cetera, et cetera, et cetera. Those things are not before me. In such a case I think disparate treatment would be part of your case. The issues before me are, regardless of how other teachers may have been treated, whether Mrs. Horwitz in her conduct was insubordinate and whether Mrs. Horwitz in her conduct was unprofessional (p13f-L1-13)."

Officer refused to examine orders that led to insubordination charges, ruling: "The orders upon which the District relies were related to her work. Their reasonableness is also established (p89d)." The App. Ct. affirmed Officer's misapplication of *Code*, which barred vital evidence at a termination hearing, providing no remedy to deter retaliation. (*Intern. Soc. For Krishna v. Rochford*, 585 F.2d 266, 265 (1968))(statutes unconstitutional if interpreted wrong) Officer barred Petitioner's evidence corroborating that charges against her were designed to stop her and others from filing discrimination charges, and discounted evidence of retaliation that were admitted stating "none of these orders subjected anyone to imminent danger (p85d)." The App. Ct. found Petitioner's claim that Officer aided an unlawful firing since unexamined orders masking a retaliatory discharge caused "imminent danger" of property loss irrelevant saying:

> "The problem was not that Hearing Officer did not permit Horwitz to present her defense. The problem was that much of Horwitz's defense was largely irrelevant to the charges against her. Horwitz sought to use the hearing to air her grievances against the administration, rather than to rebut the District's evidence (p21b)."

But Petitioner's "grievance" is what this Court held relevant: retaliatory discharge. This arduous record, focused on blaming Petitioner, has diverted subsequent courts from Officer's untenable construction of *Code*; they rehashed "facts" rather than addressed her claims of constitutional deprivation. When a wrong conclusion of law as to federal rights is intermingled with a finding of facts, facts are no longer facts. Such as, Officer found (p102d) it was "monstrous" of Petitioner to say that child E was put in her class to build a case against her despite evidence demonstrating this occurred (p6-8Af). Testimony shows Mrs. E feared Petitioner's Jewish upbringing (p29A-31f); Principal arranged a placement unwanted by Mrs. E to ignite conflict to dispose of Petitioner. Officer refused to consider Board's use of students as pawns despite this and other evidence that Petitioner's concerns were real, and reflected the community's; he was biased only Petitioner would act "monstrously." Officer barred Petitioner's cross examination of Board to show that its unlawful acts harm children (p1B-3, 20C, 33, 43-48f) since its acts were irrelevant to him. Officer ignored a father: "my trust has been shattered. It sickens me to watch abuse of power by the School District. It sickens me to know that my children are pawns in your political struggle (p47f)," and a mother describing a meeting where Principal targeted Petitioner: "Something is going on here.....that was a deep freeze in there. And it was directed at her. And this is my son's teacher (p1-3f)." Officer ignored a parent's letter: "I am concerned that the administration, in furtherance of this dispute, may be jeopardizing the children in the class (p45f)."

Officer's bias over Petitioner's accusations, which damaged Petitioner, could not have survived scrutiny of Board's acts. *Bd. of Ed. of CCSD No. 54 v. Spangler,* 328 Ill. App.3d 747, 755 (2002) held that bias violates *Code*. (*Jorman v. Veterans Admin.*, 579 F. Supp. 1407, 1418 (1984))("an agency's failure to consider data is arbitrary and capricious if it entirely fails 'to consider an important aspect of the problem' ") Deeming a claim of retaliation "monstrous" on its face turned this case on Officer's bias, not on what occurred. Arbitrarily limiting accusations against employers

opposes *McKennon*, 359: "the occurrence of violations may disclose patterns of noncompliance resulting from a misappreciation of the Act's operation or entrenched resistance to its command, either of which can be of industry-wide significance. The efficacy of its enforcement mechanisms becomes one measure of the success of the Act." Officer's limits masked the real monster discrimination complainants face, forfeiting the Act's success.

Trivializing Petitioner's core argument, the App. Ct. found a large record showing hostility sufficient, despite Officer's refusal to judge retaliation or allow an affirmative defense (p20b). Officer slyly noted its absence rather than admit he caused its absence when he said: "Assuming that such an affirmative defense is available in teacher dismissal cases, it has not been made out here. There is only Horwitz' unsupported allegation that the District was imposing unreasonable demands upon her (p102d)," leading the App. Ct. to assume that Petitioner failed at proving her affirmative defense, rather than discern that Officer had banned it from the hearing. Despite Petitioner's, 33-paged argument against retaliatory discharge grounded in case law, some found at (p7-19e), the App. Ct. focused only on whether Officer appeared biased in his rulings of what he allowed into the record, and found her need for evidence cumulative (p20, 22b) ignoring her point that no ability to show discriminatory and retaliatory orders made this hearing unconstitutional. Substituting quantity for a meaningful record and finding an absence of bias on how Officer ruled on an unconstitutional record based on his belief: "discrimination issues are not before me (p13f)," allows employers with deep pockets to create large records to prejudice courts, conflicting with this Court's ruling in *Burlington*, 362: "We would undermine the significance of that congressional judgment were we to conclude that employers could avoid liability in these circumstances," and *McKennon*, 358: "The objectives of the ADEA are furthered when even a single employee establishes that an employer has discriminated against him or her." The objectives of the ADEA are impeded when a single board evades the law as Board did. The lower courts erred in

finding procedural due process sufficient when it is widely held that a meaningful standard, or sufficient process for the issues at hand, fulfills substantive due process (*Miller v. Retirement Bd. Policemen's Annu.*, 329 Ill. App.3d 589, 602 (2002)(due process is meaningful process) Misconstruing Petitioner's position on meaningfulness of process, the App. Ct. dwelled on refuting charges rather than on what Petitioner sought, an ability to show unreasonable charges (p22b). Irremediability, or inability to correct behavior of reasonable orders, establishes cause to fire teachers. (*BOE of Round Lake Area Schools v. ISBE*, 292 Ill. App. 3d 101, 110 (1997)) ("It therefore follows that the instructions, or rules, of the employer must first be reasonable.")(*Id.*, 111)(reasonability hinges on whether orders infringe upon a legally protected behavior) Disobeying damaging orders cannot rise to cause, since damaging orders surpass the "bad Christmas" prohibited in *Burlington*, 362. Petitioner's class had a "bad Christmas." Supt. ruined a planned student holiday project (p31A-33f) by holding an impromptu retaliatory meeting.

Also, the App. Ct. misinterpreted Petitioner's argument on manifest weight. *Hazelton v, Zoning Bd of Appeals, Etc.* 48 Ill. App.3d 348, 353 (1977) held that a lack of evidence of a substantial nature resulted in a decision that was against the manifest weight of the evidence when all reasonable persons would agree it is clearly evident that a court erred and should have reached the opposite conclusion. Any reasonable person would agree that Officer's opinion that he need not consider Board's acts while it was the target of Petitioner's lawsuit, (p3-4, 6-7, 8B-10, 25-29f) (V.35RC8530) lacks substance for the issue at hand, and defies reason. Evidence of retaliatory orders would result in an opposite conclusion. It is unjust for the App. Ct. to rule that Officer, who said he would not hear accusations of retaliation, considered retaliation especially when the App. Ct. held Petitioner's "grievance" [retaliatory discharge] was not part of the hearing (p21b)(p5-6 herein). The App. Ct. focused on the factual question of Officer's disbelief of Petitioner's testimony (p31, 36b) rather than on the legal question of whether his belief that retaliation was immaterial to this case and that he had power to bar

accusations thereof is constitutional. Believability turned on Petitioner's right to make her accusations rather than on the truth of her accusations, setting a precedent that says States may deprive employees of their property rights based on an aspect of an EEOC claim. Also, *Sylvester v. SOS Children's Villages Ill. Inc*, 453 F.3d.900, 902 (7th Cir. 2006) held "similarly situated employees treated differently" is a sign of retaliation. Yet, Officer barred evidence from the three older "picked on" teachers who filed no charges, and who were not fired (p12-17, 36f). (Trivializing discrimination with his term "picked on (p5fL24-1)," Officer reveals disrespect for federal law, which shaped his rulings.) His "entrenched resistance" to anti-discrimination laws took root; he made damage from a complaint worse than discrimination (p3-4, 8B-10f). His construal of *Code* allows what *Regents* prohibits, deprivation of property over unwanted claims. It turned ADEA into a weapon of the State and impedes teachers from filing EEOC charges, fearful their accusations will be judged unworthy.

To determine retaliation a court must examine the acts of potential retaliators. Although Petitioner has argued this in each court, none have taken up her argument that it is unconstitutional to hold termination hearings for teachers that deny due process to protect them from retaliation. Without investigating orders, Officer ruled that "higher authority" renders all but dangerous orders reasonable, with no ability to determine danger, and with grieving as the sole recourse (p85d), which if available, would not satisfy procedural and substantive due process rights as per *Regents*, 570. He attacked Petitioner's integrity for not filing grievances (p90-1d) despite hearing the Union Official testify twice that Petitioner could not contractually grieve discrimination (p1A, 8B-11f) (*Hazelton, 351*)(findings must be based on the record) In response to Petitioner's citing of *Dusanek v. Hannon,* 677 F.2d 538, 543 (1982), Officer said: "the teacher had the opportunity to question the legitimacy of the order in the dismissal hearing (p82d)," but denied this ability to Petitioner saying: "Horwitz arrogated to herself the role of determining the legitimacy of this and other orders." Petitioner's point was that if "arrogating" exists, Dusanek

"arrogated" waiting for a hearing to avoid damages and Petitioner is entitled to the same rights. (Petitioner requests this Court take judicial notice of Officer's arbitrary application of law, altering of facts, and hyperbole in his decision, showing his anger against Petitioner for asserting EEOC rights.) It is important to note that Petitioner's refusal of orders to protect herself from damage occurred after years of coping with abuse and then being denied protection by Board (p49-50f). *Id.*, 543 and *BOE of the City of Chicago v. Denise Weed*, 281 Ill. App. 3d 1010, 1019 (1996) held that teachers may refuse unreasonable orders. Petitioner, harmed by discriminatory orders, triggered a hearing to show the hostile work environment with evidence that Principal bullied (p1B-3, 6-10f), denied support (V.39RC9721L10-23L18), and falsely blamed her (V.38R C9330-39). *Id.*, 1019 held: "Weed's decision to ignore the Board's order and wait for a dismissal hearing at which to defend herself was a proper exercise of her procedural rights and did not amount to insubordination." Instead of seeing if orders were reasonable, the App. Ct. judged "length of time" of conflict (p30b), and allowed Officer to "disagree" with the settled "reasonable" standard for deciding insubordination allowed the teacher in *Round Lake*, 110, and with the right to trigger a hearing to decide the legitimacy of orders allowed *Weed* and *Dusanek*. It contradicted Petitioner's multiple citations of settled law on this topic, citing no authority, handing boards a tactic to prevail at retaliatory discharge, using time to trap their prey.

Without process to show retaliation, Officer allowed what this Court prohibited in *McKennon*, an employer succeeding at discriminatory discharge over an employee's subsequent conduct. Based on this case, which judged Petitioner on how she fended off abuse, if teachers file EEOC complaints, they must endure damage like sitting ducks until a federal court intervenes, or lose the coveted property of teachers, their jobs. *McKennon 360* held that while *McKennon's* misconduct after she filed an ADEA charge warranted her firing, it did not erase her employer's discrimination against her. It held mixed-motive cases "important to the extent they underscore the necessity of determining the employer's motives in

ordering the discharge, an essential element in determining whether the employer violated the federal antidiscrimination law." Since States hold the sole process for teachers to retain jobs, a process with no ability to show retaliatory discharge allows boards control over EEOC complaints, making complaints career suicide. Even if interim damage was tolerable and federal courts had jurisdiction to reinstate teachers, a hearing like this causes insurmountable prejudice.

Given Officer's insistence that the administrators are "not on trial" at a hearing (p5f-L24-1), the App. Ct. erred ruling that Officer had considered hostility (p20b). His "monstrous" accusation and "higher authority" standard in his decision proved he had not budged (p85d). This case shows *contrived insubordination,* not insubordination since insubordination is a refusal to obey reasonable orders. In light of *Burlington*, 352, the use of damaging orders to cause insubordination is improper; this Court unanimously ruled that no amount of retaliation is tolerable as it fetters the path to filing EEOC complaints. In this case, the courts denied Petitioner an ability to show her employers' acts that caused loss of her career, of retirement benefits, of her good name, and via legal fees and costs, and loss to those denied her as a teacher, since her ability with students is undisputed (p43-48f)(V.14RC 3485L2-7)(V.37RC9179L14-24)(V.38C9320-5;9342)(V.30R C7426-7;7432-3). Further, *Krishna,* 267 and *Round Lake*, 110-111 found vague, inconsistent directives unreasonable. The App. Ct., focused on finding cause so it could ignore federal law, held Petitioner insubordinate for not producing a "meaningful" (p35b) medical certificate when Board had no definition of "meaningful," and for refusing to change a grade when *Code/10-20.9a* (p4-5g) expressly says that boards are to change grades by initialing changes, and that teachers have a right to their professional judgment to determine grades. The lawful remedy is to note and remediate deficient judgment, not infringe upon teachers' rights and property. (*Grayned v City of Rockford*, 408 U.S. 104, 108 (1972)) ("Man must be free to steer between lawful and unlawful conduct.") Arbitrary law foils steering. *Chemetco, Inc. v. Ill. Pollution Control*, 140 Ill. App.3d 283, 289 (1986) held: "Abrupt shifts in interpretation

constitute 'danger signals.'" Applying "believability (p31b)," the App. Ct. abruptly shifted the legislature's intent. If boards disagree with teachers' judgment, now they may "disbelieve" and label them insubordinate, rather than treat teachers professionally. To avoid loss over an arbitrary statute, teachers will obey orders, shifting a professional paradigm striving for quality education to one suiting "entrenched" boards. *Buchna v. ISBE*, 342 Ill.App.3d 934, 938 (2003) held that *Code/24-A-1,A-5* (p4g) striving for continuous service of good teachers, mandates that boards help teachers improve. Labeling teachers insubordinate when deficient causes turnover, which opposes *Code's* goal. (*Krishna*, 267) (vague statutes unconstitutional)

Petitioner relied on her oath as a mandated reporter of child abuse and EEOC regulations guaranteeing protection from discrimination and retaliation, certain that Illinois authorities would protect her from a retaliatory discharge. *Spangler*, 754 held: "potential for abuse present where a board of education itself decides whether it had just cause to remove a tenured teachers from its employment." Allowing uninvestigated charges to remain uninvestigated enhanced the potential for abuse. Yet, the App. Ct affirmed Officer's restrictions: "In short, Horwitz's complaints that the Hearing officer unfairly limited the record are irrelevant because the evidence she sought to admit and the arguments she sought to make did not and could not refute the allegations made against Horwitz (p22b)." It is relevant that Board never investigated (p.49-50f) allegations arising from orders made with an intent to retaliate, and that Officer refused to hear the legitimacy of the orders, and that neither afforded her substantive due process, to refute unlawful charges. Discretionary evidentiary rulings that eliminate an ability to show the truth of the matter cannot be constitutional when protection from retaliation is owed. *McKennon, 352* held that ADEA "was intended to eradicate invidious bias in the workplace." (*Spangler*, 747, 754-6) (*Code* amended in 1975, adding unbiased hearing officer to ensure lasting service of good teachers) (*M.I.G. Investments, Inc. v. Environmental Protection Agency*, 122 Ill.2d 392, 400 (1988)(court must address stated purpose of act, especially amended acts) *Id.*, 400 held that "administrative authority

derives its power solely from the statute by which it was created." *Sylvester*, 905 held that insubordination can be a "set up." By refusing to judge retaliation, the true nature of the conflict, Officer ignored the purpose of *Code* and federal law. The App. Ct. allowed broad discretion for unlawful limits, which exceeded *Code*'s power and nullified federal law, and supplanted the standard of legislative intent or rationality.

The App. Ct. ruled that proof of Petitioner's insubordination suffices as cause, but evidence that is part of a bogus set up, or a series of retaliatory land mines designed to cause failure, must be considered in the context of the conflict. (*Sylvester,* 904-905) (insubordination can be a "set up") (*Krishna*, 265) ("nullifying Constitution has chilling effect") *Code* became unconstitutional with the Illinois courts' overly broad interpretation. Petitioner's hearing was improper since bogus charges did not matter to Officer (p5-6, 19-20f). If employers may use their power over employees to cause calculated reactions, and if courts may find insubordination when orders are unreasonable, then they may fetter the right to file EEOC complaints. (*Krishna,* 265) (statutes become unconstitutional by construal) Also, if the mere utterance of a claim of retaliation labels a teacher "monstrous," it denies the ability to prove retaliation, and it invites school officials to escalate their acts to ward off EEOC complaints. Using acts too depraved to be believed, boards can inflict prejudice on teachers for discussing these acts. Ordering a teacher to a psychiatrist who diagnoses her uninvestigated accusations of retaliation as signs of "personality traits with paranoid ideas (p22-25f)," is abhorrent, Soviet Union style oppression, not due process. Petitioner had only excellent evaluations (V.24R C5991)(V.30RC7268; 7360; 7369; 7455). She earned tenure, and worked well with her superiors (V.30RC7362) until she filed an EEOC charge (V.24RC6148-51). Damage over accusations created the barriers *Burlington*, 352 prohibits. And unexamined retaliatory orders force teachers into a legal arena, relying on attorneys who make mistakes as did Petitioner's (p27b). *Balmoral Racing Club v. Illinois Racing Board*, 151 Ill.2d 367, 410-411(1992) held that constitutional rights cannot be acquiesced at an administrative hearing.

Technical mistakes that cause property loss, caused by an unconstitutional process, are intolerable damage. Petitioner's rights have been acquiesced by technicalities as if this were a game and Petitioner lost. Officer had a duty to void uninvestigated charges once aware of a lawsuit (p11A,49-50f). Instead he let technicalities of the process damage her. *Gigger v. Board of Fire & Police Com'rs. of E. St. Louis*, 23 Ill. App. 2d 433, 439 (1960) held that the process of an administrative hearing should not show bullying; hearings are to determine truth, not prosecutions. *Id.*, 439: "It should never appear, as it does in this case that the procedure was aimed primarily at proving the guilt of the plaintiff."

B. VIOLATIONS OF 1st AND 14th AMENDMENT

The App. Ct. held Petitioner's conflict with Board irrelevant (p21-22b), setting unconstitutional standards for protected speech. *Regents*, 564 holds: "When a violation of First Amendment rights is alleged, the reasons for dismissal or for nonrenewal of an employment contract must be examined to see if the reasons given are only a cloak for activity or attitudes protected by the Constitution." *Id.*, 570 says: "And a weighing process has long been a part of any determination of the "form" of hearing required in particular situations by procedural due process." Yet, the Illinois courts heard a case, acutely impacted by Article (p38-42f) with no consideration for the special "form" needed. The App. Ct. said (p19b): "Administrative proceedings do not operate under the same procedural rules as full trials," overlooking substantive due process needed to ensure compliance with the Constitution. *Balmoral*, 411 held that administrative hearings cannot acquiesce constitutional rights. *Rankin v. McPherson* 483 U.S. 378, 388 (1987) holds that speech is not considered in a vacuum. Sanitizing speech from Petitioner's case violated her due process rights; Petitioner's conflict was over speech that deserved protection under the 1st Amendment. Despite the constitutional guarantee for an analysis of speech (p20A, 21-29f) and agreement that an examination is proper (p26fL2-28fL18), Officer admitted he did not do one (p69-70d). He rationalized his failure to do so saying: "It [Article] largely dealt with her personal issues (p70d)." He erred since he used

speech against her beyond Article that needed balancing, and since "her personal issue" was age discrimination. *Connick v. Myers*, 461 U.S. 138, 148 (1983) found racial discrimination a matter of public concern. Acts that harm students and incur costs on taxpayers are public issues (p43-48f). *Krishna,* 271 held when a 1st Amendment challenge is raised against a procedure, as Petitioner clearly did (p25-29f), it poses "a serious question of constitutional validity." If Petitioner had a chance to show that a bombardment of unlawful orders was the conflict, and that her protected speech dealt with orders that damaged her and her students, the outcome would be entirely different. The Cir. Ct. held that since Petitioner's unexamined speech was disruptive, it was cause for termination (p9c). Petitioner argued punishing unexamined speech is unconstitutional; nothing was heard to determine if Board concocted charges due to her speech or to balance its content with need. (*Pickering v. Bd of Educ.,* 391 U.S. 563, 564, (1968)) (must examine speech to see if protected) (*Id.*, 563) (must balance speech on "content and need") The App. Ct., placing her speech in a vacuum, said: "Even if we were to agree with Horwitz that *resjudicata* should not bar her claims concerning her exercise of free speech, there is other evidence, completely separate from her purportedly protected speech, sufficient to support the Hearing Officer's ruling. Thus, we decline to address this issue (p23b)." This ruling does not comport with due process. (*Rankin*, 388) (speech "is not considered in a vacuum") This should alarm this Court.

Errors of law regarding speech went unchecked. *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 413, (1979) held that speech in private memos is protected, yet, the courts judged Petitioner by her unexamined, private speech. The App. Ct. admonished Petitioner's written speech (p36b), judging her as arrogant, out of context, when an examination would show that she was telling Board she was a voice for other dedicated teachers who could not afford to be fired, and was observing the EEOC's rules on who can file complaints saying: "In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity." It found her

"insubordinate and unprofessional" for her private memos calling colleagues "Stepford teachers and quislings" without reviewing the conflict or applying law that protects private speech (p36b). Officer also prejudged Petitioner over speech (p20Bf) and said, regarding her private memo complaining about administrative dishonesty: "If calling a superior a liar is an act of insubordination, and I am inclined to think that it is, regardless of the provocation, it is no defense to show the lie or lies, and I will not hear such evidence (p19-20f)." Yet, *Regents*, 564 says courts must examine for pretext, the foundation of which is lying, which is integral to retaliating. Barring a defense to show lies, barred a defense to show retaliation (p19, 20f). The App. Ct. affirmed Officer's bar of evidence on the topics in Petitioner's speech. (p3-4, 25-29f) (V.17RC4115-9) saying the truth of the matter need not be determined. A proper balance of need and disruptiveness was thus unachievable in conflict with *Pickering*, 563-564, which held courts must examine speech to see if protected and *Id.*, 563 holding courts must balance speech on content and need.

More disturbing, Officer misrepresented Article (p38-42f) as not part of Board's charges against Petitioner (p69-70d), when Officer, himself, said it was (p17A, 21f) and it dominated the record (p18,19f). Board Psychiatrist Fink based the following on her Article (p22-25f) (V.4RC938): "Her deliberate and self-destructive undermining of those relationships with little factual basis appears to be the result of something deeply rooted (p77d)." Officer, relying on Fink's view derived from Article, wrongly found Article, the cause of her demise, unworthy of an examination and irrelevant (p35d). *(Hazelton, 351)*("findings must be based on record") Despite alarming errors, the courts focused on cause to terminate (p30b), ignoring pretext for retaliation over speech or retaliatory discharge. The App. Ct.'s reliance on "facts" derived from an inadequate record and its misapplication of the doctrine of res judicata on retaliatory discharge (p22-23b), robbed Petitioner of her good name. (*Regents*, 573)(right to good name) Petitioner had argued (p14-18e) diverse actors and diverse cause of action and that the determination of property rights was outside the federal

court's jurisdiction, citing *Vargas-Harrison v. Racine USD,* 272 F.3d 964 (7th Cir. 2001) holding: "the district court's dismissal of a 1st Amendment case does not moot a procedural due process claim since property rights must be guaranteed." The App. Ct.'s res judicata ruling (p23b) (p15 herein) opposes *Vargas*. This Court must decide if a doctrine intended for judicial economy may eliminate 1st Amendment claims at such a hearing because "other evidence" exists.

Further misapplication of law is vital to note since the radical nature of these errors shows zeal to establish cause to avoid applying federal law, opposing McKennon's intolerance for employers' evasion of federal law. *Code/24-5* (p4g) allows boards to order teachers for fitness for duty exams by licensed physicians to protect students from unfit teachers, not for silencing dissent. Using Board's documents (p22-25f) rather than a full and proper investigation, Fink decided Petitioner was "imagining" retaliation. Serving more as a lawyer than a doctor, he used Petitioner's lack of specificity about teacher abuse at Avoca as proof she imagined it. Judging Petitioner on *lack of facts* caused by his power to control questions and keep facts out is an explicit violation of *Code's* guarantee for an impartial hearing. Consider this: Board imposed Fink on Petitioner despite her appeal for an unbiased doctor (V.31RC7605-10). Fink admitted he violated (V.4RC967 L1-968L2) Petitioner's release, admitted he used only Board documents (V.4RC984L22-985L19); and admitted bias: "It's hard for me to be completely objective because of my involvement in this case (V.4RC0909)." Yet oddly, Officer found Fink unbiased (p36b)(V.37RC9137-8). (*Sylvester,* 904-905)(courts must find "set up's") *Caviness v. BOE. of Ludlow CUSD No. 2,* 59 Ill. App. 3d 28,31(1978) says procedures cannot "obliterate protections of statute." (*Regents,* 572)(liberty guaranteed) *Burger v. Lutheran General Hosp.* 198 Ill. 2d 21, 51 (2001) held: "unreasonable invasions of privacy are constitutionally forbidden." Yet, the App. Ct. approved Officer (p36b) expanding *Code§24-5* (p4g) beyond the legislature's intent to where it evaded Petitioner's privacy. It held Petitioner insubordinate for refusing medically invasive orders based on Officer's excuse

(p87d): "[the exam] gave rise to questions as to whether Mrs. Horwitz had a more serious condition that she was attempting to hide," when Fink testified: "[Petitioner] was clearly very bright and that in terms of her behavior she had it pulled together (V.4RC985L12-14)." It is indefensible to order medical treatments for "pulled together" teachers; it opens disturbing doors. Taken to its logical extreme, there would be no end to the type of intrusive examinations and procedures performed on teachers. As it is, Board ordered Petitioner to discuss her sex life as part of Fink's "exam" he shared with Board, adding sexual harassment to the weapons available to ward off EEOC complaints; this act, born from unbridled power, damages far more than *Burlington*'s bad Christmas.

What's more, Fink put the object of Petitioner's EEOC complaint (V.25RC6079-98), Supt., in charge of monitoring Petitioner's *need* for medical care based on if Supt. observed a "continuing perception of harassment," employing intimidation to stifle EEOC complaints (p35d). Officer's cavalier reply to Petitioner's claim that only Board can legally order an exam exhibits disregard for the law (p85d): "These are distinctions without a difference. Higher authority is higher authority; if Horwitz' inaction was due to her waiting for the Board to order the examination, there could be no argument that she was refusing Sloan's directive, clearly insubordination." But there is a difference when orders are retaliatory, and teachers need protection. If a refusal to follow unlawful orders, after found fit for duty, is cause to terminate, as the App. Ct. held (p36b), when no finding of retaliation took place, Illinois Courts have honed a menacing tool for boards. This Court must limit courts to what statutes allow and ban scheming boards from medically infringing upon fit teachers. This case gives this Court insight into why attracting and keeping quality teachers is problematic, and certain to remain as such unless this Court uses its supervisory authority to order "entrenched resistant" boards (p37f) and States to comply with the law. *Rankin,*388 held: "It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech. We

have also determined that speech alleging illegal misconduct by public officials occupies the 'highest rung of First Amendment hierarchy.'" Broad discretion moved evasion of discrimination laws to the highest rung. The rulings herein on our nation's most cherished right (p17A-29f) are appalling.

Round Lake, 113 held that an administrative hearing must uphold guidelines that comply with due process under the 14th Amendment. Violations of speech and refusal to hear retaliatory discharge caused a lack of substantive due process. (*Jorman,* 1418)("agency's failure to consider data is arbitrary and capricious if it entirely fails 'to consider an important aspect of the problem' ") *Zuber v. Ill. Power Co.*, 135 Ill.2d 407, 416 (1990) said rulings cannot "frustrate the manifest legislative intent." The App. Ct. said due process was met because the record of the hearing contains hostility (p19b), ignoring that Officer refused to consider any evidence pertaining to the retaliatory acts of her superiors, which Petitioner could have shown included orders and acts designed to single her out, humiliate her, burden her with duties, bully her until stress broke her down, prejudice her colleagues, and create a hostile work environment with orders that would cause her to resign or if that failed, appear insubordinate. Petitioner's argument has been that Officer stated explicitly he would not consider evidence regarding administrators' treatment and that he denied corroboration to that which slipped in such as the Union Director's testimony: "I thought the district was making [a] very bad mistake by what we saw as a kind of vendetta against Karen for filing a suit (p7f)." *People v. Badoud,* 122 Ill.2d 50, 62-63 (1988) held that "deciding due process requires balancing three considerations." One is the risk of erroneous deprivation: an employee's opportunity to respond must be adequate enough to prevent deprivation. His rulings, denying Petitioner an affirmative defense showing the true nature of the charges against her, denied substantive due process since what made the record, remained uncorroborated and ignored. The App. Ct. ignored the heart of her claim by trivializing the law and focusing on partial evidence and *facts* born from a process in conflict with the Constitution. It had a duty to respond to

Petitioner and rule on Officer's construal of *Code*; facts are irrelevant if Officer failed to follow the law to form them and made an incomplete record for the court.

The App. Ct. erred finding that Officer considered what he avowed he would not hear, and stated he did not consider and in finding evidence crucial to Petitioner's defense immaterial, such as colleague Lanners' testimony (p12-17, 36f)(p21-22b). It should have been considered and not limited since it was critical testimony to corroborate her claim of retaliatory firing. Lanners knew that Principal: bullied teachers into not filing EEOC charges; targeted Petitioner with discriminatory orders to silence her; fomented discord amongst staff to turn them against Petitioner; and persistently fabricated incidents. Officer barred Petitioner from asking Lanners questions material to her defense. And what is in the record, but not considered, amounts to the same injustice as if it had never entered the record, resulting in erroneous deprivation. (*Levenstein v. Salafsky et al.*, 164 F.3d 345, 351 (7th Cir. 1998)("excluding a full hearing on civil rights lets the state eliminate property rights at whim") *Wainscott v. Henry,* 315 F. 3d 844, 854 (7th Cir. 2002) held that the mayor's lack of meaningful investigation before firing *Wainscott* failed to comport with due process. This Court must decide if Board's undisputed refusal to investigate discrimination and retaliation (p37, 49-50f), which subjected Petitioner to damaging orders, then forced her into a damaging legal procedure, violates due process under the 14th Amendment, or if the responsibility lies with Officer, or both, in light of *Burlington*. The Illinois legislature added a hearing officer to the termination process in 1975, because as *Spangler*, 755 said: "the legislature clearly concluded that local boards were not always disinterested nor impartial and, therefore, were unable to afford the necessary process required prior to dismissal of a tenured teacher." Since Board had a motive to retaliate against Petitioner, an investigation was needed. *Stull v. Depart. of Child, & Family Serv.*, 239 Ill. App.3d 325, 333 (1992): "The purpose of judicial review of an administrative agency's decision is to keep the agency within its statutory grant of authority and thus guard the rights of the constitution and

statute." *Buchna*, 938, speaking on *Code/24-A-1, A-5* said boards must properly evaluate to help teachers grow. Board and Officer opted out of their duty to *Code* (p11A, B 49, 50f) and federal law. This decision makes law elective, creating a *retaliatory insubordination plan* for teachers who assert rights.

Further, *Bd. of Educ. of Chicago v. State Bd of Educ.,* 113 Ill.2d 173, 196-197 (1986) held that signs of cover up are relevant and *Sylvester,* 904-905 held that evidence is needed to see if an employee was set up to appear insubordinate. (*McGee,* 490)(courts must protect statutorily protected rights) Officer, misled the courts (p5-6f) about his ban on an ability to show arbitrariness by opining (p85d): "Unless it could be shown that [Supt.] Sloan's directive was arbitrary, she had no right to disobey," and (p101d): "The burden of proving that matter [retaliation] must lie with Mrs. Horwitz. She has failed to show that the attention devoted to her, the great amount of memos and meetings, etc. were for any purpose other than legitimate bureaucratic self-protection." Officer's deception and focus on bureaucratic need to guard against complaints rather than on Board's duty to prevent retaliation demonstrates bias and intolerable ignorance of the law that departs too far to leave standing; self-protection to crush dissent is not legitimate. *Sylvester*, 904-905 says when retaliatory discharge is raised, it is the duty of the courts to look for "pretext." Officer's false assertions, his finding Fink unbiased (p17 herein), and the altered documents in the record, discussed below, are suspicious acts that conflict with the App. Ct's finding of "no signs of conspiracy (p27b)." *Sylvester,* 904-905's holding that courts have an obligation to uncover "set up's" applies to Officer and ISBE as well as Board. (*Gigger*, 439)("It should never appear, as it does in this case, that the procedure was aimed primarily at proving the guilt of the plaintiff.") Officer blocked Petitioner from cross examining Board (p33A-35f) regarding Forgery #1's (V.37RC9090-1) obstructed text[1] that showed Board's

[1] Text removed from a letter to Board said: "Throughout the years, past experience has shown that what the parents want and what the children need is not important...it is what [Supt.] Dr. Sloan wants is what goes."

disregard for the public it serves (p36f)(V.27R C6653-V.28 RC6875) based on content and likely tampering with public documents. Since the App. Ct. found Petitioner's conflict with Board [retaliatory discharge] "irrelevant," it held obstructed text as "not probative of the issues presented in the case (p25b)." However, it is probative of the issues needed to comply with due process and uncover "set up's."

Also, the conflict between the App. Ct.'s interpretation of "shall" in this case (p23b) and the Illinois Appellate Court Third District's interpretation of "shall" in *Stull,* 332 as well as in *Buchna*, 938 is so extreme that only an agenda to find Petitioner guilty or an attempt to find cause to avoid federal law could explain it. Petitioner argued that Officer's late decision violated *Code/§34-85* (p4g) and her due process rights under the 14th Amendment, making it invalid. (*Zuber, 416)*(statutory violations cause erroneous deprivation) Time limits ensure a process cannot be made arbitrary. (*D'Acquisto v Washington*, 640 F.Supp. 594, 618 (N.D.Ill. 1986)) (delays require the same due process balancing acts as other issues). The App. Ct. replied that *Stun v. Depart. of Child, & Family Serv.,* 239 Ill. App.3d 325, 332 (1992), meaning *Stull,* held that "shall" is directory, or discretionary, not mandatory (p23b) when a review of *Stull* supports Petitioner's claim that *shall* is mandatory. *Stull*, 333 says: "Thus the word 'shall' may be held to be merely directory only where no advantage is lost, no right is destroyed, and no benefit is sacrificed, either to the public or to any individual." *Id.*, 332, held: "The purpose of judicial review of an administrative agency's decision is to keep the agency within its statutory grant of authority and thus guard the rights of the constitution and statute," and "The failure to comply with a mandatory provision of a statute will render void the proceeding to which the provision relates." *Id.*, 332 continued: "This is particularly true where the agency's non-compliance with its own rules prejudices one who is subject to the authority of the agency" and "determining whether a provision is mandatory requires examining the statute's intent." *Id.*, 335 "We think it follows that a gross deviation from those time limitations would be deemed to be unreasonable and contrary to the legislative

intent, evidenced by the setting of time limitations, that the agency act in a reasonably timely manner." *Id.,* 333 held that statutes prescribe conduct to safeguard rights "which may be injuriously affected by failure to act within the specified time as mandatory." *Buchna*, 938 applied this argument to *Code* holding therein "shall" means mandatory since: "By using both the words 'may' and 'shall' in adjoining sentences, the legislature demonstrated independent signification of permissive and mandatory scenarios." A choice for a late decision is unconstitutional on its face since it is not an option in *Code*. *Jones v. General Superintendent of Schools*, 58 Ill. App.3d 504, 507 (1978) also on *Code*, says: "A tenured teacher is entitled to a construction of the tenure laws consistent with the prime purpose or object." *Jones,* 507 held: "because the statute in question is designed to expedite the disposition of charges against an employee and to protect the employee from arbitrary and capricious delay by the Board, the procedures and time periods set forth in the statute should be interpreted as mandatory rather than directory." *Jones*, 508 held: denying *Code*'s protection damages teachers; any remedy to changing a statute lies with the legislature, not the courts; and boards lose authority to dismiss teachers by failing to follow *Code*, a precedent the App. Ct. disregarded. It is well settled that statutes are to be followed explicitly or a system becomes arbitrary. *Caviness*, 31 held: "procedures cannot obliterate statute's protections." ISBE ignored *Code*'s mandate to promulgate uniform standards and feigned no remedy (V.37RC9116-8). It stated in its 3/28/02 letter to her that it could not guarantee Officer would return the record, implying that either she stick with Officer or create a new record. However, *Code§34-85* (p4g) mandates that ISBE remove Officer, who exceeded *Code*'s time limit and broke his promise to render a decision three times (V.38RC9390; 9393; 9399; 9402). The stalled process and Petitioner's fear of having to start over impelled her to use a letter writing campaign that prejudiced her case (V.38RC9389-9421). On 6/5/02, ISBE threatened to sue Officer (V.35RC9139-0); this impelled his decision. Board backed Petitioner's argument that a late decision was unfair (V.35RC8515-6; 8532), "neither party should be placed in the position of probing the reasons

for delay." The App. Ct.'s finding that a late decision caused no prejudice (p24b) is seriously in error. *Horwitz*, Petitioner's federal case, decided in 2000, held that Petitioner was not fired over speech, thus denied a trial, when it turned out she was fired over many speech issues. Had Officer rendered a timely decision, in 2000, Board could not have prevailed at summary judgment. A manipulated 2002 decision let Board and ISBE apply res judicata and fire Petitioner over speech.

Condoning a late decision that infringed her rights opposes this Court's position in *McKennon*, *Burlington*, and *McGee,* which forbid workplace retaliation as well as established law on protected speech. Also, if an agreement to a late decision (with rights preserved) (V.35RC8562) relieves the ISBE of its constitutional duty, it allows the ISBE to rewrite the law and randomly put teachers in a holding pattern so they will relinquish their rights, which should be estopped. (*Geddes v. Mill Creek Country Club*, 196 Ill.302, 314, (2001))(cannot trick other party into a loss) (*Krishna*, 265) (Laws permitted to become arbitrary are unconstitutional) *In Re Consolidated Objections to Tax Levies,* 193 Ill.2d 490, 496 (2000) held that a departure from the plain language that reads meaning into a statute other than the expressed intent is not a proper standard and *Id.*, 500 held that a court considers each provision of a statute in connection with every other section. Late decisions oppose continuous service of good teachers. Nor can Petitioner's manipulated consent for a late decision relieve the mandate to protect public interest, the reason for observing statutes as written. Parents begged for Petitioner's return (p43-48f). Since the legislature provided constitutional alternatives, ISBE cannot give Petitioner unconstitutional choices that violate her due process rights under the 14th Amendment or the public's interest. (*Jones,* 508)(court has "duty to apply the strict standards" of *Code*). Courts must attach suspicion to acts that wear down opponents and stray from settled law. *Citizens Environment v. Ill. Pollution Bd.* 152 Ill. App.3d 105, 112 (1987) held an official with an "unalterably closed mind in matters critical to the disposition of the proceeding shows convincing evidence of administrative irregularity." The engineered outcome that

shows bias, caused prejudice. It is obvious who caused the shameful, threatening letter (V.35RC9139-40) sent to Officer. Only Petitioner (and students) stood to lose if no decision was rendered as Board was rid of Petitioner with no decision. Petitioner triggered a hearing to escape a retaliatory employer. (*Weed*,1019)(can trigger hearing) (V.32RC7893-5) Forgery #2, a document altered while in ISBE's hands to remove Petitioner's accusations of unlawful acts in Special Education, signaled that she had best agree to a late decision, secure her record and escape from game playing ISBE. She wrongly believed a real court would not affirm the justice obstructing acts of ISBE's kangaroo court since permission to manipulate *Code* erodes *Code*, *Jones, 507.* Since trampling teachers' rights, thus those of students and taxpayers, was immaterial to the Illinois Courts, Petitioner took this to this Court. Case law, statutory interpretation and history, and a reasonable and just reading of that provision of *Code* itself do not justify the App. Ct.'s findings that nullify federal statutes.

Also, *Geddes*, 314 and *Byron Com. Un. Sch. Dist. v. Dunham-Bush*, 215 Ill. App. 3d 343, 348 (1991) held that reasonable reliance on another party is the standard for estoppel. The App. Ct., in conflict with settled law, raised the standard for estoppel to "under official order" of the other party when *Grayned,* 108 held that laws cannot be arbitrary. It is undisputed that Petitioner's disclosure of her personal audio tape ("Tape") to Board members was the act that deprived her of her right to personal use of Tape and caused a ruling of insubordination (p81d)(p33b). The App. Ct. ruled that since the two Board members, who listened to Tape did not officially order Petitioner to play Tape, the Respondents were not estopped from causing Petitioner's shift from a right to Tape for personal use to a charge of being in possession of a student record. It correctly stated that Petitioner made Tape to show teacher abuse (p33b), discounting that retaliation, held unlawful by *Burlington*, 352 and *McGee*, 490, is a form of teacher abuse. By sending Board members to Petitioner's home to feign concern about harm occurring to Petitioner and her students, Board tricked her into playing Tape for them. Petitioner "reasonably relied" that they had authority to know

of and intent to stop unlawful retaliation that was harming children (p31A-33, 43-48f), unaware that playing Tape for them could turn it into a student record, and allow Board to establish insubordination. Had she held it to use in court, permissible prior to her playing Tape (p33b) (p81d), the opportunity to use an order against her would not exist. The App. Ct.'s ruling conflicts with *Geddes*, 314 holding that a party must be estopped from deliberately causing another party to fail. Citing no authority, the App. Ct. changed the doctrine of estoppel that case law has held for hundreds of years. *(Krishna*, 265)(Laws permitted to become arbitrary are unconstitutional.) Also, Petitioner only needed Tape because Board failed to provide protection from her administrators (p49-50f)(V.36RC8986-90); property loss has occurred over denied protection as well as capricious interpretations of law.

Sylvester, 902 held that protection from retaliation calls for an examination of pretext. The App. Ct.'s reference to teacher abuse as "her own interest (p33b)" and its rulings conflicting with precedent are startling given the likelihood of retaliation with this set of facts.[2] The App. Ct.'s sanction of a new standard for estoppel, placing charges built on entrapment in reach of boards, has so departed from the usual course of judicial proceedings, this Court needs to intervene to preserve judicial integrity. *In re Lieberman*, 201 Ill. 2d 300, 307, (2002) held: "the legislature did not intend inconvenience, absurdity, or injustice, in its enactment of legislation," all elements herein. After evading his duty to decide, Officer misled busy courts by cleverly disguising and thus muting the scope of the case in his decision. Officer told Petitioner to take her case to a higher court if she disagreed (p5-6f), but used his power to obstruct her. An officer who disrespects *Code* and the rule of law, and misleads higher courts must not succeed. *Greer v Ill. Housing Author.*,122 Ill.2d 462, 505, 497 (1988) held agency actions can be "set aside due to arbitrariness." It is time a court rules on the rulings that decided the process and consider ulterior motives

[2] Petition asks this Court to take judicial notice of academic research on teacher abuse in *Breaking the Silence*, by Drs. Blase (V.36RC8810-8830).

for stalling the decision: fear that his rulings could not survive an appeal or Petitioner's federal case. (To this day, no court considered evidence about a scheming board.) Officer assumed that Petitioner would persist; he aptly noted (p35d): "Horwitz portrays herself as a champion of students' welfare and a leader against the fight over age discrimination at her school." She remains dedicated to this cause. He had motive to hide a decision that echoed *Dred Scott v. Sandford*, 60 U.S. 393 (1857), a blemish on this nation, holding that African American citizens were unworthy of rights afforded white citizens. This case holds teachers unworthy of rights afforded other employees, also creating an underclass. Not publishing this case ensures that many teachers will remain in the destructive cycle described herein due to confusion over law, as will their unfortunate students. The future of our schools now lies in this Court's hands. For the sake of all effected by the education system, including children who suffer from the collateral effects of retaliatory discharge, Petitioner respectfully requests that this Court serve in a supervisory capacity to clear up a disturbing decision that permits States to eliminate a retaliation defense and thus use retaliatory orders to deprive excellent teachers of property, and to settle serious conflicts within Illinois Courts to safeguard due process for hearings.

III. CONCLUSION

In a news article about Petitioner's federal lawsuit, some young teachers called Petitioner "disruptive," advising her to resign if "unhappy" (V.35RC8530), when what made her "unhappy" was age discrimination, retaliation and its harm to students (p38-42f). Petitioner believes protecting teachers and thus children is patriotic. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999) held children cannot be denied education on a discriminatory basis. Retaliating against teachers places unlucky students in the line of fire used to cause these teachers to fail. Targeted teachers become preoccupied with fending off damages, and coping with classes "stacked" with unruly students. Board's agenda of using students as pawns (p1B-3f, 43-48f) is a precursor for school violence. Yet, the rulings in this case show the Illinois

Courts agreeing with those teachers. However, this Court's prior rulings contradict her colleagues' advice of job loss to remedy discrimination. Petitioner relied on the EEOC's promise as posted at her school, to protect her from retaliation and its inevitable damages including property loss. Officer's ruling that unlawful acts of administrators are not a defense in a termination hearing turned a promise into a trap. (*Grayned,*108)("Man must be free to steer between lawful and unlawful conduct") This country needs an authoritative voice to settle this and publish its decision to prevent the harmful effects of widespread confusion about federal law as it pertains to teachers, which includes fear of speaking about practices in schools that hurt children, despite oaths to report abuse and adhere to constitutional law. Rules not enforced by the EEOC invite serious damage to teachers exposed by participating in protected activity. For the sake of similarly situated teachers and students, Avoca must serve as an example; uninvestigated charges must be held invalid. (*Round Lake,* 107-108) (unreasonable charges void) Reporting discrimination in good faith to Board after years of enduring and witnessing such, should not result in retaliatory discharge. This Court needs to protect the integrity of education and the law and use this opportunity to clarify the law as it pertains to school boards in light of its position on discrimination, retaliation and free speech.

Unpublished, the few attorneys who discover that process to determine retaliation is optional at a termination hearing will begin warning teachers against filing EEOC complaints or speaking of such. Most will not find this case, and will continue to advise teachers of their statutorily protected rights, at the peril of teachers and students. Before finances required Petitioner to proceed pro se, many attorneys advised her that she need not obey retaliatory orders (V.38RC9359-64). Officer held, "The fact that she may have acted on the advice of counsel is no defense (p89d)." If his rulings are proper, this Court needs to publish his rulings to guide attorneys so they can preserve their clients' property unlike Petitioner's who failed to protect her property. (*Grayned,*108) (guaranteed freedom to "steer between lawful and unlawful

conduct") Or, if this Court agrees that teachers' statutorily protected rights are not discretionary and Officer is incorrect, it must order States to hear sufficient testimony during termination hearings to ensure orders to which teachers are held insubordinate are not retaliatory, and bar discretionary rulings on such issues. Boards' motives for orders after teachers raise constitutional complaints must be "on trial" or retaliation is advanced. No teacher should experience the damages inflicted on Petitioner, yet many have. Teacher Stories at *EndTeacherAbuse.org* verify boards' unchecked use of retaliatory discharge. The serious conflicts of law, potential for a widespread erosion of rights in other States, and high costs to society make this vital to review; children will remain vulnerable without widely known findings. Petitioner asks this Court to take judicial notice that the union (NEA) denied representation for her appeal; unions discard targeted, not deficient teachers. The balance of power is far too skewed for this to settle in time. This case is a chance for this Court to cure serious systemic discrimination problems.

In view of the widely known problems of our failing public schools, Petitioner brought this case to the highest court for the same reason she became a teacher: to make a difference. This Court cannot expect to see a teacher put forth this effort anytime soon because the costs in time and money are vast given boards' tax subsidized power to bury adversaries with documents such as Officer's 67 single-paged decision required in this petition and the more than 10,000-paged record. Also, it entails learning the law to file pro se as attorney fees are prohibitive. This is a rare opportunity for this Court to examine the public school system from a new perspective, wary of broad discretion, which has allowed the rulings in this case to stray far from the U.S. and Illinois Constitutions. In his concurring opinion in *Schaffer v. Weast*, 546 U. S. 49, 126 S. Ct. 528, 537 (2005), Honorable Justice Stevens said: "I believe that we should presume that public school officials are properly performing their difficult responsibilities." However, when dealing with entrenched resistors, which this case shows, a presumption of good faith eliminates the crucial checks and balances needed to detect

improper acts that hinder enforcement. A critical examination of this present case shows officials fostering power rather than serving children, a fundamental reason that education reform fails. Boards advance retaliatory discharge of teachers due to their privileged ability to evade the law using taxpayers' funds for litigation few private businesses, much less teachers, could afford. Thus, few teacher discrimination cases advance high enough to allow this Honorable Court a role in repairing defects in our schools stemming from their resistance to law. Nor do many find justice. *Settlegoode v. Portland Public Schools*, 371 F.3d 503 (9th Cir. 2004) is a rare case in which a targeted teacher prevailed. *Moser v. Bret Harte Union High School*, 366 Fed. Supp.2d 944 (E.D. Cal. 2005) is a rare example where a court sanctioned a legally finagling board, an appeal Petitioner had to forgo due to space limitations on appeal, not on its merits; it is no accident that teacher mistreatment is almost unknown. Abuse of power is fundamental to school failure; broad discretion has become a weapon of mass destruction in our schools. The "if it ain't broke don't fix it" theory cannot apply to an institution widely recognized as broken. Since public education is the great equalizer, when courts misapply law in education, as in this case, they contribute to the dismal status quo that denies our society quality schools. On behalf of all teachers, children, parents, and taxpayers, who are powerless to effect change and are losing in so many ways due to public schools that operate above the law, Petitioner prays that this Honorable Court will grant this writ of certiorari and bring the full weight of its authority to bear to inject wisdom and rule of law, both profoundly missing, into our failing education system, systemically mired in "entrenched resistance," and thereby compromised in its ability to perpetuate the core democratic values of our society.

KAREN HORWITZ, February 21, 2007
Petitioner, Pro Se
25 E. Superior St., #2904
Chicago, Illinois 60611
(312) 397-1940 / Cell (312) 498-9074

Petitioner's Appendix TABLE OF CONTENTS

APPENDIX A
Illinois State Supreme Court Judgment (11/29/06).....1a

APPENDIX B
Karen Horwitz v. Illinois State Board of Education, Stephen B. Rubin, Hearing Officer, and Board of Education Avoca School District, No. 37, Cook County, Illinois, No. 04-1640 (Ill. App., 1st Dist., 6th Div., Decided June 20, 2006).....1b

APPENDIX C
Karen Horwitz v. Illinois State Board of Education, Stephen B. Rubin, Hearing Officer, and Board of Education Avoca School District, No. 37, Cook County, Illinois, No. 02-CH14327 (Circuit Court of Cook County, Illinois, County Department, Chancery Division, Judge Donald J. O'Brien, Memorandum Opinion, October 30, 2003).....1c

Karen Horwitz v. Illinois State Board of Education, Stephen B. Rubin, Hearing Officer, and Board of Education Avoca School District, No. 37, Cook County, Illinois, No. 02-CH14327 (Circuit Court of Cook County, Illinois, County Department, Chancery Division, Judge Martin S. Agran, Memorandum Opinion, May 5, 2004).....7c

APPENDIX D
Before the Illinois State Board of Education, In the Matter of the Dismissal of Karen Horwitz, Respondent, by Board of Education of Avoca School District 37, Petitioner, (Stephen B. Rubin, Hearing Officer, Decided June 29, 2002).....1d

APPENDIX E
Petitioner's Proof of Raising Federal Issues.....1e

APPENDIX F
Testimony from Hearing.....1f

Petitioner's Published Essay.....38f

Community Responses from Record.....42f

APPENDIX G

Provisions of U.S. Constitution.....1g

ADEA under the Civil Rights Act of 1964
29 U.S.C. § 623 (a), *29 U.S.C.* § 623 (d), ...1g

Title VII of the Civil Rights Act of 1964 (Title VII)
§2000e-2(a), § 2000e-3(a) 2g

Provisions of Illinois State Constitution
Illinois Constitution, Article I.
Bill of Rights § 1., § 2., § 4., § 12. .....3g

Illinois State Statutes

(105 ILCS 5/) School Code.....4g

(105 ILCS 5/34-85) Teacher Terminations.....4g

(105 ILCS 5/24-5) Fitness for Duty.....4g

(105 ILCS 5/10-20.9a). Final Grades 4g

(105 ILCS 5/24A-1) Teacher Evaluations 5g

(105 ILCS 5/24A-5) Teacher Remediation 5g

Petitioner's Appendix A

STATE OF ILLINOIS
SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of November, 2006.

Present: Robert R. Thomas, Chief Justice

Justice Charles E. Freeman Justice Thomas R. Fitzgerald
Justice Thomas L. Kilbride Justice Rita B. Garman
Justice Lloyd A. Karmeier Justice Anne M. Burke

On the twenty-ninth day of November, 2006, the Supreme Court entered the following judgment:

No. 103168

Karen Horwitz,	Petition for Leave To Appeal from
Petitioner	Appellate Court First District
v.	1-04-1640
	02CH14237

The Illinois State Board of Education
Stephen B. Rubin and the Board of Education
Of Avoca School District No. 37, Cook County, Illinois,
Respondents

The Court having considered the Petition to appeal as matter of right and being fully advised of the premises, the Petition to Appeal as matter of right is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEROF, I have hereunto subscribed my name and affixed the Seal of said Court, this fourth day of January, 2007

SEAL

s/_____

Juleann Hornyak
Clerk

Supreme Court of the State of Illinois

Petitioner's Appendix B

NOTICE

The text of this order may be Changed or corrected prior to the Time for filing of a Petition for Rehearing or the disposition \ of the same/

SIXTH DIVISION
June 30, 2006

No. 1-04-1640

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAREN HORWITZ,	)Appeal from the Circuit Court of
	)Cook County, Illinois, Law Division
Plaintiff-Appellant,	)
	)Circuit Court No. CH 14237
	)The Honorable Donald J. O'Brien, Jr.
THE ILLINOIS STATE BOARD OF EDUCATION, STEPHEN B. RUBIN and THE BOARD OF EDUCATION OF AVOCA SCHOOL DISTRICT NO. 37, COOK COUNTY, ILLINOIS	)

FILED
Circuit Court of Cook County, Illinois
2007 JAN-9 PM 3:40
CIVIL APPEALS DIVISION
_____CLERK
DOROTHY BROWN

ORDER

Karen Horwitz (Horwitz) seeks reversal of a decision issued by Hearing Officer Stephen Rubin (Hearing Officer) on behalf of the Illinois State Board of Education (State Board) and orders of the Circuit Court of Cook County which upheld her termination by Avoca School District No. 37. The District, through the Board of Education of Avoca School District No. 37 (Avoca School Board), charged Horwitz with thirty-one counts of teacher misconduct and terminated her employment. The State Board sustained the District's charges. Upon a complaint for administrative review, the Circuit Court of Cook County affirmed the Board's order.

On appeal, Horwitz argues that 1) she was denied

due process because the administrative proceedings were "arbitrary," that the Board and the circuit court erred in applying the doctrine of *res judicata* to prevent her from presenting arguments that her termination was improperly based on actions that were protected by the First Amendment, that the State Board's decision is void

Page 1

No. 1-04-1640

because the Hearing Officer submitted his order outside of the time provided by statute, and that the circuit court erred by not considering her arguments that two exhibits used at the hearing were "altered" or "forged," and that the circuit court ought to have issued sanctions and found defendants in contempt of court. Aside from these procedural rulings, Horwitz argues that 2) the charges against her were insufficient cause for dismissal and that the Board's finding that she engaged in irremediable misconduct was against the manifest weight of the evidence. Finally, Horwitz argues that 3) the circuit court erroneously denied her motion to limit the record on appeal. For the reasons stated below, we affirm.

BACKGROUND

As an initial matter, we note that although we have reviewed the record thoroughly, it would be an impossible and unnecessary task to discuss all of the evidence, exhibits, filings, pleadings, and arguments raised by the parties. Only a portion of the evidence is germane to the outcome of the instant appeal. As such, we provide a cursory discussion of some evidence and discuss in greater detail those portions of the record necessary to our analysis of the case.

Academic Years 1993-96

Avoca West Grade School provided instruction for students from kindergarten through fifth grade. Throughout the time at issue in the instant case, the Principal of Avoca West was Dr. Venette Biancalana, the Superintendent was Dr. John Sloan, and the President of the Avoca School Board was Ms. Dorothy Ballantyne. The teachers were represented in labor matters by the Avoca Education Association. The relationship between the District and the union was governed by a collective bargaining agreement.

Karen Horwitz was a substitute teacher for several

years before she was hired as a fulltime fourth grade teacher at Avoca West in 1993. Biancalana directly supervised Horwitz and all

the other teachers at Avoca West. There were few problems between Horwitz and the school administration during her first two years of full-time teaching, at least through the time that Horwitz was recommended for tenure. Biancalana's evaluations of Horwitz's during her first two years of full-time teaching and found her to be "excellent," the second-highest rating available and second only to the "superior" rating. Biancalana recommended that Horwitz receive tenure.

Biancalana testified at the hearing that shortly after she recommended Horwitz for tenure, an escalating series of disputes arose between her and Horwitz any time she spoke with Horwitz concerning a criticism. For example, Biancalana held a meeting with Horwitz to discuss a parent's complaints that Horwitz had mistreated her son and treated her rudely. Horwitz walked out before the meeting concluded. A contentious correspondence between Horwitz and Biancalana followed, where Horwitz justified her abrupt departure as simply following her doctor's instructions to avoid exacerbating a heart condition with unnecessary stress. She also instructed Biancalana in writing "to modify your style and only bring me in for issues that are worthy of writing up so as not to jeopardize my health with issues based on hearsay." Biancalana informed Horwitz in writing that Horwitz's behavior constituted "gross insubordination," that she should discuss matters in "a professional and respectful way," and that "[f]ailure to comply with these simple directives will constitute continuing gross insubordination which is totally unacceptable." Despite this dispute between Biancalana and Horwitz, the Avoca School Board granted Horwitz tenure.

In 1995-96, Biancalana criticized Horwitz's treatment of and instruction of some students. Horwitz blamed the purported instructional deficiencies on the absences of her

teaching assistant. Biancalana responded that Horwitz, as the classroom teacher, was responsible for meeting instructional goals and criticized her tendency to blame others. By the end of the year, Horwitz

and Biancalana rarely spoke to one another, and instead communicated largely in writing.

Academic Year 1996-97

Avoca West utilized a team-based approach where instructors at each grade level worked together in developing curriculum and enrichment projects. The teachers met in regularly-scheduled team meetings to coordinate these collaborative efforts. In 1996, there were four members of the fourth-grade team. Karen Horwitz and Sheryl Haste were the two more experienced instructors. The two younger teachers were Laura Beaupre, who previously taught third grade at Avoca West, and Jeannie Schafer, who was new to the school.

Beaupre, Haste, and Horwitz all testified that conflicts emerged on the fourth-grade team early during the 1996-97 academic year, with Horwitz and Haste on one side and Beaupre and Schafer on the other. Beaupre testified that Horwitz confronted her and Schafer at a team meeting using harsh and belittling language. Horwitz later responded to this accusation in a letter to the School Board that accused Biancalana of trying to "show off' the younger teachers. This tension among the fourth grade team continued throughout the 1996-97 school year.

Biancalana formally evaluated Horwitz in April of 1997. Her overall evaluation of Horwitz was "excellent," though Biancalana criticized Horwitz's failure to work cooperatively with the other members of the fourth grade team. Horwitz responded to Biancalana in a lengthy written memo where she argued that she was a good team member, but that Biancalana should have selected Horwitz, rather than Beaupre. to serve as the "mentor" on the fourth grade team. Horwitz also argued that Biancalana ought to change her evaluation to reflect a "superior" rating.

Biancalana subsequently informed Horwitz that she planned to reassign Horwitz to teach fifth grade in 1997-98. Horwitz requested that she remain a fourth grade teacher and complained that the reassignment was discriminatory. Biancalana denied having a discriminatory motive and

responded that she had decided to reassign Horwitz to fifth grade was because there was a need for a fifth grade teacher and to alleviate the tension on the fourth grade team. Biancalana also testified that because Horwitz was a more experienced teacher, she would be better qualified to teach an older class. The collective bargaining agreement between the District and the teacher union explicitly empowers District administrators to change teaching assignments for individual teachers. Horwitz did not file a grievance about her reassignment, though she later filed an age discrimination lawsuit in federal court.[1]

Academic Year 1997-98

Biancalana testified that in the fall of 1997, some parents complained that Horwitz was not having her students use the science lab and instead assigned book reports and biographies as science homework. When Biancalana confronted Horwitz about these complaints, it launched another round of heated correspondence. Biancalana instructed Horwitz in writing to follow the science curriculum and to have her students work in the lab. Biancalana noted that the science curriculum had been developed and approved by the Science Committee, which included her fellow fifth grade teacher, Joe Baker, a 20-year teaching veteran at Avoca West. In response, Horwitz wrote a letter accusing Biancalana of harassing her in retaliation for filing the age discrimination lawsuit. Horwitz also criticized Baker's science curriculum and stated that she was familiar with "Brian Based Research," implying that Baker was not, and stated that her teaching

[1]In addition to a claim of alleged employment discrimination, Horwitz's federal lawsuit also alleged that the District engaged in other retaliatory conduct. Upon the District's motion for summary judgment, the federal trial court dismissed Horwitz' s lawsuit. The Seventh Circuit

methods were more up to date than Baker's. Horwitz sent a copy of this letter to the School Board. Baker testified at the hearing that he was so humiliated by Horwitz's memo that he wrote to the School Board to defend himself.

On January 19, 1998, Horwitz appeared before the Avoca School Board to discuss her problems with the administration, where she read from a prepared statement. Horwitz's statement asserted that although she was an excellent teacher, she did not have to "work for a living." Because of her husband's successful law practice, she could "pursue this pseudo-profession" of teaching. She complained vehemently about the administration and alleged that drug abuse at the school had increased due to the "apathy" of students, presumably facilitated by the atmosphere created by the administration. She claimed that she had been forced to teach fifth grade "as a punishment" and that the Avoca West administration bad engaged in "[o]utrageous interchanges" with her. She also demanded that the District investigate the purported pattern of abuse of teachers by the administration.

Horwitz's statement referred to teachers who had accused her of unprofessional conduct, as Joe Baker had done, as being "Stepford teachers" who were part of a "system of quislings who reap their rewards for providing information about their fellow colleagues rather than for their efforts with their students or their competency." She accused the administration of creating an atmosphere where "[t]eachers are encouraged to 'tattle' on each other to earn brownie points form out leader so that she can write up people she dislikes; incompetent behavior is covered up as a reward for playing [Biancalana's] game." She claimed that a fellow teacher had quit his teaching job because of "the outrageous abuse he received from this administration." She further stated that she had been targeted by the administration because she was "too advanced for the current leadership" and that her sophisticated ideas about education "threaten[ed]

them."
Page 6

No. 1-04-1640

On February 16, 1998, the Avoca School Board submitted a written response to Horwitz.
The Board described the situation between Horwitz and the administration as being"intolerable,"but made no judgments about who was to blame. Instead, the Board instructed Horwitz and Biancalana to engage in conflict resolution with a neutral mediator. The Board rejected Horwitz's call for an investigation into the administration's alleged "abuse" of teachers. Horwitz asked if the Board would consider a counterproposal. Dorothy Ballantyne, the Board President, stated that the Board might consider another option if Horwitz would submit a prompt counterproposal. By March 9, 1997, Horwitz had not submitted any counterproposal. As such, Ballantyne ordered that the previously proposed mediation go forward.

Horwitz responded in writing that while she was amenable to "using a good faith effort to reestablish a good working relationship," she refused to agree to mediation "without the proper investigation done by you or an outside party." Horwitz further wrote that she was "deeply offended by your disregard for my dignity, considering that I have dedicated myself to the children of Avoca for over five years." Horwitz's lengthy letter used highly inflammatory language,including her statement that she had been "psychologically raped" by the administration, that Sloan and Biancalana had made numerous "false allegations" against her, and that their treatment of her constituted "atrocities." She further alleged that Sloan "operates like a bully and intimidates people into submission." She described confrontations that she and her husband had with Sloan, and went to say that her health had "deteriorated" since she came to work at Avoca West and that she was "convinced that the out of control adrenalin that occurred when I feared these people and what they could do or say to me contributed to substantially to [sic] my heart condition." Horwitz also described Sloan and Biancalana as being "outrageous

administrators." Horwitz's letter further stated that "your administrators spread rumors about past and

current employees and continue defaming people," that she was "determined to vindicate my name for revealing them for what they are so that no one will believe them if they attempt to spread more false rumors about me. I live in this community and I must protect my name. Therefore, I cannot and will not enter into mediation without the truth revealed." Horwitz accused Biancalana of going after her so "vindictively" because Horwitz had got in the way of Biancalana's plans to "show off" Beaupre and Schafer.

Horwitz concluded by asking whether the Avoca School Board would be willing to consider other conflict resolution formats. Ballantyne again replied that the Board would be willing to reconsider the conflict resolution format if the parties could agree on an alternative. Again, no agreement was forthcoming.

Anita Friede, a Learning Specialist who worked with special education students at Avoca West, testified that in the spring of 1998, she sent a memo to a special education team, which included both Horwitz and Biancalana, about B. B., one of Horwitz's students. Friede's memo noted that B. B. was frequently absent from "Homework Club," a twice-weekly session where students received individualized help with homework. Horwitz responded to Friede in a written memo dated March 13, 1998, stating that she did not believe that Homework Club was helpful. Horwitz's letter also scolded Friede for sending a memo to the administration, accusing her of having "questionable motives," and noting that "this administration operates in a covert manner," and that "it appears to me that they have engaged you to accomplish their agenda."

On April 1, 1998, Horwitz sent another memo to the School Board stating that Biancalana had drawn Friede and special education instructor George Tuttle into the dispute, which "substantiates that I was correct to be concerned about the sincerity of Venette's stated intention to take part in conflict

resolution." Horwitz then contrasted her goal of helping Avoca West's

students with what she claimed was Biancalana's goal, which was to "harass" Horwitz. Horwitz accused Biancalana of "outrageous" behavior and of "operat[ing] in 'gang' style." Horwitz then accused the local teacher association President, Tracy Gordon, as being among a "disingenuous" group of teachers who did the bidding of the administration. Horwitz's lengthy memo went on to say that the Avoca School Board's refusal to investigate the administrations alleged misconduct gave "the administration the right to be judge, jury, and executioner, which is not the American way." Horwitz stated that she could not "imagine how you people [members of the Avoca School Board] sleep at night knowing what they [Sloan and Biancalana] are doing to me."

On April 8, a special education team met to discuss B. B.'s progress. The team members included Horwitz, Friede, Tuttle, Biancalana, and B. B.'s parents. Horwitz notified all of the participants that she intended to record the conference on audiotape. After the meeting, Friede and the administration sought copies of Horwitz's recording on the ground that it was a student record. Horwitz refused, in writing, to tender copies of the tape, arguing that the tape was for her own personal use and that the tape was her only defense if she was later accused of wrongdoing.

Shortly thereafter, Horwitz played the tape for two Avoca School Board member. Horwitz testified that the recording proved that the administration had harassed her at the special education meeting.[2] These two Board members were not members of the special education team.

[2]The record contains some evidence indicating that Friede and Biancalana made comments at the meeting that B. B.'s grades were lower in the current year than in past years. Horwitz interpreted this comment as an unfair attack against her, as Horwitz had suggested that B. B. Be assessed compared to his peers. Although Horwitz claimed that she was being attacked at this meeting for having made this suggestion, the evidence suggests that team adopted her suggestion and agreed to continue evaluating B. B. as compared to his peers without "adjusting" his grades.

The administration informed Horwitz in writing that it believed that Horwitz had violated the law concerning maintaining the confidentiality of student education records. As such, they requested that Horwitz provide them with the original recording and all copies. Horwitz again refused and continued to assert that she needed the tapes to prove her claims of harassment.

On April 16, 1998, Horwitz's husband notified the administration by fax that Horwitz "had been experiencing various symptoms," and that her doctors had "recommended that she immediately remove herself from her hostile working environment." The fax also stated that Horwitz would "let you know when she is ready to work." The fax advised that Horwitz was "to have no contact with any members of the Avoca School District Staff" that "lesson plans will have to be completed for her class," as Horwitz had only prepared lesson plans "up to and including Friday, April 17, 1998. Math is planned somewhat beyond that date." The fax then stated that "correspondence that needs immediate attention must be handled by someone else during Karen's absence." Following the faxed letter was another document with some basic instructions for Horwitz's substitute teacher.

On April 24, 1998, during Horwitz's absence, Sloan faxed a letter to Horwitz stating that he would require Horwitz undergo a "medical fitness for duty examination by a physician designated by the District," consisting of a physical and a psychological examination, before she could return to work. Sloan further requested that Horwitz sign a release form to permit a District-appointed physician to examine her medial records.

That same day, Mr. Horwitz faxed a response stating that Karen Horwitz's test results were "favorable," that she was "symptom free, and she is feeling better." The note on the cover sheet further stated that he had "[e]nclosed a copy of a letter which indicates that [Horwitz] should take two weeks off from her job," that Horwitz had now taken two weeks off, and that she

now felt "well enough to return to work." The letter asked "what provision of the Union Contract or other authority upon which [Sloan was] basing [his] requirement that [Horwitz] undergo a medical fitness for duty examination by a physician designated by the District." Mr. Horwitz also faxed a letter prepared by one of Horwitz's doctors, recommending that Horwitz "be given two weeks of sick leave to remove her from an extremely hostile working environment which may have a negative impact on her medial condition."

Karen Horwitz remained absent from work while she refused to submit to physical and psychological exams. Horwitz's cardiologist wrote a letter to the District stating that she had undergone medical tests on April 14, 1998, and that the results of this test put her condition within "acceptable limits." The doctor also noted that Horwitz was "completely asymptomatic" as of April 29, 1998. Horwitz finally agreed to submit to a physical exam by a District-selected physician on May 14, 1998, though she refused to submit to a psychological exam. The doctor found Horwitz fit for duty, and she returned to teaching on May 15, 1998.

On April 20, 1998, while Horwitz had been absent from work, the School Board heard statements from several teachers who had specific complaints about Horwitz's conduct. Those teachers included Tracy Gordon, President of the local teacher association, Anita Friede, a learning specialist and special education instructor, Laura Beaupre, one of Horwitz's fourth-grade teaching colleague, and Patti Flocca, another former President of the local teacher association. These same teachers testified at the hearing, where they described Horwitz's refusal to work cooperatively, her refusal to disclose information on students' special education progress, her refusal to provide information on enrichment projects, and her habit of accusing anyone who disagreed with her or criticized her of colluding with the administration.

After hearing these statements, the Board adopted a formal written "Notice of Remedial

Warning" (First Notice) that it sent to Horwitz. The First Notice stated that Horwitz's conduct had been deficient and unsatisfactory in a number of respects, that the administration's attempts to remedy the conduct had so far proven unsuccessful, that the administration considered Horwitz to be either "unwilling or unable to take corrective action" and that if Horwitz continued in this manner the Board would make formal charges for dismissal.

On May 19, 1998, Avoca School Board President Ballantyne directed Horwitz and the administrators to appear May 22 for a mediation session and that all parties make a good faith effort to resolve the conflict. All attended the meeting, but they did not resolve the dispute.

Summer 1998

On June 19, 1998, Sloan ordered Horwitz, in writing, to turn over the original and all copies of the recording of B. B.'s special education conference. Horwitz refused. On July 10, 1998, Sloan wrote Horwitz that he intended to recommend remedial action against her due to her failure to turn over the recording and her refusal to consent to a psychiatric examination.

On July *15,* 1998, Horwitz's attorney submitted a letter to the Avoca School Board which stated that Horwitz would turn over a copy of the recording, but that she would keep the original. The letter further indicated that B. B.'s parents had agreed to permit Horwitz to disclose this information to whomever was necessary. Horwitz, her husband, and John McCluskey, a representative of the teacher union, explained to the Board that Horwitz needed to keep the recording to protect herself from charges of misconduct and to prove that she was being harassed by the administration. The letter also provided that Horwitz would consent to psychiatric testing, but would do so "under protest," she believed that the Board's order was a retaliatory action.

That same day, the Avoca School Board adopted a "Second Notice of Remedial Warning," which again alleged

that Horwitz's conduct continued to be unprofessional and

insubordinate. The Board ordered Horwitz to "return the original tape recording and any copies" of the special education meeting "on or before July 24," and that failure to comply with this directive would be considered insubordination and possible grounds for dismissal. The Second Notice also stated that Horwitz's continued refusal to undergo a psychological examination, despite repeated requests that she submit to psychological testing no later than July 1, 1998. The notice stated that "[b]ased upon your repeated noncompliance with prior requests by the district, the Board of Education directs you to arrange and undergo a psychological examination on or prior to July 24, [1998]," by Dr. Peter Fink, a forensic psychologist.

Dr. Fink's Report and Horwitz's Response

Dr. Fink subsequently interviewed Karen Horwitz and reviewed memos that Horwitz had sent to the administration. Based on this information, Fink prepared a written report about Horwitz, which Superintendent Sloan submitted to the Board in November of 1998. Fink's report described Horwitz as having as having histrionic, narcissistic, and paranoiac personality traits, and noted that Horwitz saw herself as a "champion" for her students and as a "leader against the alleged fight over age discrimination." Dr. Fink did not believe that Horwitz suffered from a major mental illness and found her to be "mentally fit to return to work as a fifth grade teacher." The report also stated, however, that Horwitz might have a personality disorder and that her situation could deteriorate. Fink thus recommended that Horwitz undergo additional psychological testing and that the school closely monitor Horwitz's classroom behavior and her interactions with students. Dr. Fink also suggested that the contact Horwitz's physicians to monitor her physical condition and to determine the interaction between her mental state and her purported physical symptoms.

On November 17, 1998, Sloan instructed Horwitz to

undergo additional psychological

testing and to provide doctors' reports about her physical status, as suggested by Fink's report. In a written response, Horwitz subsequently refused. She asserted that she had "fully remediated" her refusal to participate in conflict resolution and reasserted her belief that the administration had acted "illegally, discriminatorily, and in a vindictive and retaliatory manner" by assigning her to teach fifth grade. Horwitz again refused to surrender the recording of the special education meeting and both she and her attorney wrote to the District stating that she refused to submit to any further psychological examinations and refused to provide releases of any further medical information. Horwitz's letter also denied that she had treated any teachers inappropriately.

1998-99 Academic Year

Despite Horwitz's denial of mistreating fellow employees, Amy Nakai, a Teaching Assistant in Horwitz's fifth-grade classroom, testified at the hearing that in the fall of 1998, Horwitz repeatedly reprimanded her, in front of students, of doing a bad job. Nakai testified that she resigned on December 16, 1998, because of Horwitz's criticism.

Also, in 1998, a student, S. E. was enrolled in Horwitz's fifth-grade class. Mrs. E., S. E.'s mother, was regarded as a "high maintenance" parent because she frequently communicated with and often made extra requests from S. E.'s teachers and administrators. Early in the year, Horwitz wrote the administration that she feared that Mrs. E.'s concerns would be overwhelming and asked that S. E. be assigned to Mr. Baker's fifth grade classroom. When the administration refused to reassign S. E., Horwitz accused the administration in writing of refusing the transfer because they wanted S. E.'s presence in the classroom to harass Horwitz. McCluskey and Haste testified that they had expressed their concerns about S. E.'s assignment to Horwitz's classroom to the administration, but that the administration placed S. E. in Horwitz's class anyway. Biancalana testified at the hearing that S. E. was in Horwitz's class simply because the

administration was trying to distribute the students evenly between the fifth grade teachers and not for a retaliatory reason or as an attempt to set Horwitz up to fail.

In October of 1998, Mrs. E. sent Biancalana a letter complaining that Horwitz had yelled at S. E. in class and that Horwitz refused to talk to Mrs. E. or to return her calls. Horwitz complained in writing to the administration that Mrs. E. refused to schedule meetings at times that were convenient for Horwitz. In November, Mrs. E. wrote again, listing 15 separate complaints about Horwitz's teaching. On December 2, 1998, Horwitz met with Mrs. E. and Biancalana to address Mrs. E.'s complaints. Among that list of complaints was an allegation that S. E. had experienced nightmares and had expressed frustration about the way Horwitz treated her in class. On December 3, 1998, Horwitz sent Mrs. E. a letter, which stated:

> "I want to advise you that as result of our conference yesterday, I decided that I need to adjust one of the marks on [S. E.'s] fall trimester report card. As I explained during our conference [of November 23, 1998], I have been concerned about [S. E.'s] ability to accept corrections and disappointments. Since I was informed during our conference yesterday, [sic] that the fifteen points in your letter of complaints were based primarily on [S. E.'s] perceptions, I believe she is seriously in need of help regarding this area. Since I focus on being fair to my students and meeting their individual needs, in my professional judgement, [S. E.] has some serious issues with interpreting and processing decisions made by authority figures. Prior to our conference, and based on communications with you, I had attributed this discrepancy in thinking as primarily between you and myself. Now that I know that it is attributable to her perceptions, I decided that I needed to make that change. In accordance with school policy, I am informing you

of this change."

Mrs. E. complained to Biancalana that Horwitz lowered a grade on S. E.'s report card as a response to Mrs. E.'s complaints about Horwitz. Biancalana ordered Horwitz to reinstate S. E. 's previous grade. Horwitz refused. Subsequently, consistent with school policy giving the administration the right to adjust a student's report card, Biancalana restored S. E.'s grade to its higher level.

On January 5, 1999, the Avoca School Board held a meeting where they heard from the administration concerning alleged misconduct on Horwitz's part. Horwitz's attorney again asserted that Horwitz was not legally required to submit to additional psychological testing or to submit her copies of the recording of the special education conference. The Board adopted a "Third Notice of Remedial Warning," which again alleged that Horwitz had engaged in unprofessional and insubordinate conduct, including Horwitz' s apparent retaliation against S. E. 's mother by lowering S. E.'s grades and her failure to restore the grade as instructed by the administration. The Third Notice also described Horwitz's "repeated unwillingness" to schedule conferences with parents, her failure to work cooperatively with other faculty, and her ongoing refusal to submit to psychological testing and to tender medical records. The Board ordered Horwitz to comply with Sloan's directives by January 22, 1999.

Horwitz responded in writing that she had lowered S. E. '5 grade based on her "professional judgment" in light of information disclosed in her conversation with S. E.'s mother. Horwitz continued in her refusal to submit to any additional psychological testing or disclose any medical records, as she had been found "fit for duty" by Dr. Fink.

On January 22, 1999, Sloan and Biancalana notified Horwitz in writing that they had decided to remove S. E. from Horwitz's class. On January 28, 1999, Sloan wrote again to tell

Horwitz that her continued refusal to submit to psychological testing constituted insubordination and noncompliance with the Third Notice of Remedial Warning.

Horwitz's Absences and Dismissal

On March 2, 1999, Horwitz attended school in the morning but took one—half day of sick leave in the afternoon. She did not provide an explanation of why she was leaving. Sloan wrote Horwitz to request a reason for her absence. Horwitz responded that sick leave permitted leave for family illnesses as well as personal illness, though she never stated that there was a family illness or, if so, who was ill. Sloan again requested a reason for the leave. Despite repeated requests by the administration, Horwitz never explained her half-day absence.

On March 16, 1999, Horwitz notified the administration at Avoca West stating that she would be out for "several days." On March 19, 1999, Horwitz advised Biancalana in writing that at the advice of her doctor, she should "absent" herself from work for unspecified "medical reasons" at least through April 16, 1999; while she hoped to return on April 19, 1999, that would depend on the doctor's assessment of her "medical condition." Horwitz noted that she had prepared lesson plans for only one week.

Biancalana testified at the hearing that it was customary practice during extended absences for a teacher to work out a plan with the Principal, provide lesson plans for the substitutes, and to check-in regularly with the Principal. Biancalana testified that Horwitz's lesson plans notes did not contain enough detail for the substitutes to follow. Horwitz made no attempt to confer with her substitutes concerning lesson planning during her absence.

Sloan wrote to Horwitz stating that a physician's certificate was required to justify any absence after March 23, 1999. Horwitz responded that she would obtain a certificate from him when he returned from being away. On April 14, 1999, Horwitz provided a letter from her

doctor, Dr. Ciganek, simply stating that Horwitz was absent "for medical reasons." The note was otherwise nonspecific about Horwitz's health, except to say that Ciganek examined Horwitz on April *5,* 1999, but found that her unnamed condition "had not improved."

On April 16, 1999, Sloan again wrote Horwitz, and stated that the note from Dr. Ciganek was insufficient and that the District would not issue Horwitz any more paychecks until he received a more detailed explanation for her absence. On April 20, 1999, Horwitz faxed Sloan a message that she had asked Dr. Ciganek for a more detailed statement.

On April 21, 1999, Sloan wrote Horwitz yet another letter stating that Horwitz had been absent from school since March 16, 1999. He catalogued her alleged noncompliance with the Board's directives, her failure to provide a meaningful and timely physician's certificate, her failure to prepare adequate lesson plans during her extended absence, and her failure to communicate with the school or her substitute concerning lesson planning. Sloan noted that he would recommend that the Board terminate Horwitz's employment on April 23, 1999.

On April 23, 1999, Horwitz's attorney faxed the District a letter from Dr. Ciganek stating that Horwitz had been diagnosed with "Major Depression," in March, and that as of April 5, 1999, Horwitz had shown only slight improvement. Ciganek also noted that as of April 19, 1999, Horwitz's condition had improved and "in the near future," "she would be able to return to work," and "effectively carry out her duties and responsibilities as a teacher."

The Board voted to terminate Horwitz and adopt charges against her on April 23, 1999. Horwitz invoked her right to a hearing before the State Board of Education. Although the Hearing Officer was to issue a decision in the case within 30 days of the end of the hearing, the Hearing Officer did not issue his decision in the instant case for 19 months after the close of the hearing. Both sides acquiesced, in writing, to this delay. The Hearing Officer upheld the

District's decision to terminate Horwitz. Horwitz sought review in the Circuit Court of Cook County, which affirmed the administrative decision. This appeal follows.

ANALYSIS

I. THE ADMINISTRATIVE AND CIRCUIT COURT PROCEEDINGS COMPLIED WITH DUE PROCESS.

Horwitz argues that the Hearing Officer conducted the administrative proceeding in a way that violated her due process rights and prevented her from defending against the District's charges. Administrative proceedings do not operate under the same procedural rules as full trials. Comito v. Police Board of Chicago 317 III. App. 3d 677, 687 (2000) (noting that due process in an administrative hearing" 'does not require a proceeding in the nature of a judicial proceeding, *** but is satisfied by a form of procedure that is suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice'"), quoting Telcser v. Holzman, 31111. 2d 332, 339 (1964). It is, however, a "well-settled principle of law that concepts of due process apply to administrative hearings, and the parties are guaranteed the right to a fair and impartial tribunal." Girot v. Keith 212 III. 2d 372, 380 (2004). In an administrative hearing, due process requires procedures that conform to the" 'fundamental principles of justice,' "which include "notice of what claims will be presented at the hearing and what consequences will result." Aloha. Inc. v. Illinois Liquor Control Comm'n. 191 111. App. 3d 523, 528-29 (1989), quoting Waste Management of Illinois. Inc. v. Pollution Control Board 175 III. App. 3d 1023 (1988). An administrative hearing satisfies the requirements of due process when the party concerned is" 'provided an opportunity to be heard in an orderly proceeding which is adapted to the nature and circumstances of the dispute.'" General Service Employees Union. Local 73. Service Emplovees International Union v Illinois Education Labor Relations Board.285 111.App.

3d 507, 515 (1996), quoting Obasi v. Department of Professional Regulation. 266 Ill. App. 3d 693, 702 (1994). A fair heating includes" 'the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence.'" Hearne v. Chicago School Reform Board of Trustees of the Board of Education for Chicago 322 111. App. 3d 467, 484 (2001), quoting Abrahamson v. Illinois Department of Professional Regulation. 153 III. 2d 76, 95 (1992). Horwitz alleges several purported due process violations which we address here.

A. The Hearing Officer's rulings and procedures were not arbitrary.

Horwitz argues that she "had no opportunity to show the [Avoca School] Board's duplicitous agenda," because the Hearing Officer "irrefutably denied Plaintiff the right to a defense that showed the subterfuge, *** after which[,] Officer misrepresented the facts and feigned that he had allowed this defense." Specifically, Horwitz argues that the Hearing Officer permitted "zero witnesses" to testify about the "sham charges raised against her to set her up to fail," and that she was not "able to cross examine any witnesses, or have any evidence supporting her defense about the true conflict at Avoca considered." (emphasis in original).

The record of the hearing, however, belies Horwitz's claims. The Hearing Officer permitted Horwitz to submit a great deal of evidence, including the testimony of 17 witnesses whose collective testimony filled over 1,300 transcribed pages and exhibits numbering in the hundreds of pages, including copies of correspondence between Horwitz and the administration showing the purported hostility between them. The Hearing Officer permitted Horwitz to cross-examine the District's witnesses, the testimony of which takes over 900 pages of pages in the transcripts. There is no apparent bias in the Hearing Officer's rulings, as he granted many objections made by Horwitz's attorneys and overruled many objections made by the District. To the extent he followed the rules of evidence concerning issues such as hearsay, he did so

consistently. Although the Hearing Officer made some statements that were critical of Horwitz's presentation, we see nothing in this record that suggests that the Hearing Officer was biased towards the District or against Horwitz.

The problem was not that Hearing Officer did not permit Horwitz to present her defense. The problem was that much of Horwitz's defense was largely irrelevant to the charges against her. Horwitz sought to use the hearing to air her grievances against the administration, rather than to rebut the District's evidence. The central inquires at the instant disciplinary heating concerned whether Horwitz engaged in certain specific behaviors and whether those behaviors constituted irremediable misconduct. Horwitz's evidence failed to refute the District's evidence that Horwitz changed a student's grade in retaliation against a parent, refused to restore that student's grade, illegally disclosed a student's private educational records, and abused the school's leave policy. In our view, to the extent the Hearing Officer excluded certain evidence and limited some cross examination of witnesses, he was properly limiting the focus of the proceeding to address the charges against Horwitz. See People ex rel. Klaeren v. Village of Lisle, 202 III. 2d 164, 185 (2002) (noting that in an administrative proceeding, the right of cross-examination "is not unlimited and may be tailored" by the municipal body or administrative agency "to the circumstances specifically before it,"), citing Hyson v. Montgomery County Council 217 A.2d 578, 586 (1966) (the relevance of cross-examination varies with the nature of the evidence presented and requires a similar exercise of discretion by the body conducting the heating).

For example, Horwitz complained that the Heating Officer prevented Peter Lanners, who would have testified as to the administration's purported hostility towards older teachers, and limited the cross-examination of the administration and the members of the Avoca West School Board concerning the specific evidence of Horwitz's misconduct. In our view, the Hearing

Officer's rulings were correct. Lanner's testimony was nonspecific and immaterial, as it did nothing to refute the Board's evidence that Horwitz had engaged in misconduct. Further, Horwitz's desired cross-examination of the School Board's witnesses was cumulative because the evidence of Horwitz's misconduct had already been described in detail by witnesses who testified and the exhibits submitted at the heating. Sufficient evidence was already available to permit the Hearing Officer to evaluate the deliberative process of the Avoca School Board. The additional evidence Horwitz sought was irrelevant, redundant of other evidence that was already part of the record, or both. Contrary to Horwitz's arguments, the Hearing Officer's procedures and his understanding of the nature and scope of the disciplinary hearing were consistent with the Code and due process. Horwitz makes several other arguments alleging procedural flaws that are similarly unavailing, as they are not based on an accurate understanding of the law or the facts of this case, such as claims about the circuit court's failure to conform to rules about citation of cases demonstrating a "lack of meaningful process in this case."

In short, Horwitz's complaints that the Hearing Officer unfairly limited record are irrelevant because the evidence she sought to admit and the arguments she sought to make did not and could not refute the allegations made against Horwitz. The evidentiary rulings made by the Hearing Officer were discretionary, and Horwitz fails to persuade us that the Hearing Officer abused his discretion in making these rulings.

B. Questions regarding the application of the doctrine of *resjudicata* are superfluous.

The circuit court held that because the federal court had dismissed Horwitz's claim of retaliatory discharge, Horwitz could not raise this same argument in the instant proceeding due to the operation of the doctrine of *resjudicata.* Horwitz argues that the circuit court erred in applying the doctrine of *resjudicata* because the issues in the federal case were different from the

issues raised in the administrative hearing, which concerned her exercise of protected speech. She also argues that because the Hearing Officer and the State Board of Education are parties to the state-court action, the identity of the parties in the federal suit and the state suit are different, thus *resjudicata* should not bar her claim.

We need not, however, address the merits of this issue. Even if we were to agree with Horwitz that *resjudicata* should not bar her claims concerning her exercise of free speech, there is other evidence, completely separate from her purportedly protected speech, sufficient to support the Hearing Officer's ruling. Thus, we decline to address this issue.

C. The Hearing Officer's delay in rendering a final decision did not violate due process.

Horwitz argues that the State Board's decision is void because the Heating Officer filed his decision outside the time limit provided by statute. Under Illinois law, a Heating Officer with the State Board of Education "shall, within 30 days from the conclusion of the heating or the closure of the record, whichever is later, make a decision as to whether the teacher shall be dismissed." 105 LLCS 5/24-12 (West 2004) (emphasis added). It is undisputed that in the instant case, the Hearing Officer issued his order nearly 19 months after the hearing ended.

In our view, the Code's use of the word "shall" to describe the time limits is directory rather than mandatory. See Stun v. Department of Children and Family Services 239 III. App. 3d 325, 332 (1992) (noting that the word "shall" is considered directory, rather than mandatory, when a statute "merely directs the manner of conduct for the guidance of the public officials or where the section is designed to secure order, system and dispatch in proceedings"). We further note that Horwitz repeatedly acquiesced to the delays in writing. In a letter dated April 24, 2001, Horwitz, through her attorney, consented to permit the Hearing Officer an extension of time to tender his decision until May 18, 2001. On October 29, 2001, Horwitz, again through counsel,

consented to an extension of time until November 30, 2001. When the Board of Education began proceedings to replace the Hearing Officer due to his delay, Horwitz wrote a personal letter, dated April 6, 2002, requesting that the State Board retain Rubin as the Hearing Officer:

> "I request that the state do everything in its power to ensure that Mr. Rubin render a decision. It is not acceptable to me that you remove him as a [H]earing Officer rather than use the powers of the state to insist that he rules. *** Removing Mr. Rubin from his duty to rule in this case is not acceptable to me***."

Given that the time limits provided in section 24-12 are merely directory, the absence of any identifiable prejudice to the plaintiff, and that Horwitz herself personally, explicitly, and repeatedly acquiesced to the delay in writing and specifically requested that the State Board retain Rubin as the Hearing Officer, we reject Horwitz's claim that the Hearing Officer's order is void due to the delay in filing the final decision. It is in the best interests of judicial economy to permit the instant decision to stand rather than remand this cause for additional proceedings. See Combs v. Board of Education of Avon Center School District No. 47. 147 Ill. App. 3d 1092, 1101 (1986) (denying a request for a new hearing when the decision was rendered outside of the period proscribed by statute; "it would be inherently unfair to burden the ISBE and the local school board with the time and expense a second hearing would entail").

D. The Hearing Officer did not err by admitting two purportedly "fraudulent" exhibits.

Horwitz also argues that the circuit court "wrongly found 2 [sic] altered documents waived against [sic] the manifest weight of the record & [sic] in violation of plaintiffs due process right" [sic]. The first of the two purportedly "altered" or "fraudulent" documents was Exhibit No. 292, a letter dated May 1, 1998, from a parent of one of Horwitz's students to the Avoca School Board. When this letter was first submitted as an exhibit at the dismissal hearing,

Horwitz's attorney noted that the bottom lines of the letter were blurred out or illegible. The attorney for the District also noted that her copy of the letter was similarly "blurred" or clipped off. The District's attorney noted that the exhibit was a copy of the letter, and that she would "check into" whether they could find the original. Subsequently, one of Horwitz's attorneys submitted legible copy that included these final two lines: "Throughout the years, past experience has shown that what the parents want and what the children need is not important... it is what Dr. Sloan wants is what goes." (ellipses in original).

Horwitz argues that this sentence is critical to the outcome of her case because it is the very essence of her defense. She argues that the Hearing Officer's decision to admit the truncated exhibit into evidence prejudiced her case and provided grounds for the circuit court to provide sanctions and to find them in criminal contempt of court. Horwitz's arguments are without merit. The missing lines were obviously the result of the letter having been photocopied or faxed in a way that caused the last two lines of the letter to be obscured, as the attorneys noted at the hearing. Also, Horwitz suffered no prejudice, as a fully legible and complete copy of Exhibit 292 was subsequently submitted into the record. Even more importantly, Exhibit 292 is immaterial to the outcome of the instant case. The text of the letter that was legible adequately communicated the parent's point — she supported Horwitz and felt that the administration was indifferent to the student's needs. The author of this letter was not present at any of the meetings or confrontations described in the record. The letter expressed an opinion, based on unspecified "past experience," that Superintendent Sloan does not care "what the parents want or the children need." This hearsay-based character evidence, which lacks any *indicia* of reliability is not probative of the issues presented in this case.

We reject Horwitz's argument that it was error for the Hearing Officer to admit this

exhibit, and affirm the Circuit Court's orders denying her motions to correct the record, her motion to show cause, her motion for sanctions, and her motion that the District be found in criminal contempt. We also reject Horwitz's argument that it was reversible error for the circuit court to refuse to consider arguments about the purported forgeries. The Circuit Court did not abuse its discretion. See Technology Innovation Center. Inc. v. Advanced Multiusers Technologies Corp., 315 111. App. 3d 238, 244 (2000) (noting that the decision to grant or deny sanctions is entrusted to the sound discretion of the trial court, to be overturned only when it appears from the record the court abused its discretion).

Horwitz also claims that the circuit court ought to have considered her argument that Hearing Officer Exhibit 8 was a forgery. Exhibit 8 consists of Horwitz's response to the School District's motion to bar a special education expert from testifying on Horwitz's behalf at the dismissal heating. The version of Exhibit 8 contained in the record contains the signature of Horwitz' s attorneys and presents various arguments as to why the testimony of a special education expert is needed. The record does not contain a certificate of service for this document. Horwitz claims that the document that was actually filed had several additional paragraphs of argument which laid out additional reasoning. Horwitz submits this longer version of the pleading, accompanied by a certificate of service indicating that the response was filed by Horwitz's attorney on October 4, 1999. Horwitz does not, however, submit a file-stamped copy, a receipt, or any other documentation demonstrating that the Hearing Officer or the District received this longer version of the exhibit.

Before the circuit court, Horwitz moved that the longer version of the exhibit be placed in the record. She also alleged that the version of Hearing Officer Exhibit 8 that is in the record is a forgery, and that the District ought to be sanctioned and found in contempt of court for replacing

the longer version of the exhibit with the shorter version. We agree with the circuit court that Horwitz's argument is waived because the Hearing Officer gave the parties an opportunity to review the exhibits, including Hearing Officer Exhibit 8, and to lodge an objection if one was necessary. Horwitz's attorney explicitly stated that Horwitz had no objection. Her chance to object to this exhibit was thus waived. McLean v. Department of Revenue. 326 111. App. 3d 667, 674 (2001) (failure to object at the original proceeding waives this issue on appeal).

On appeal, Horwitz accuses the District and the State Board with removing the longer version of the responsive pleading and replacing it with the shorter version in an intentional effort to weaken her case on appeal. Horwitz's charges of conspiracy are unsupported. The version of Hearing Officer Exhibit 8 that is in the record contains the signature of Horwitz's attorney. Her attorney did not file an affidavit or any other documentation suggesting that the version of Exhibit 8 in the record is a forgery or represents anything other than the pleading actually filed with the Hearing Officer. Moreover, the transcript is replete with arguments made by Horwitz's attorney explaining why, in Horwitz's view, a special education expert ought to have been allowed to testify. It appears that Horwitz's attorneys prepared different versions of the motion and that a shorter version of the motion is the one that wound up being filed with the Hearing Officer. Horwitz's arguments that the exhibit in the record is improper is barred by waiver. Her allegations of fraud and conspiracy are unsupported by any evidence other than her own allegations, and arguments about prejudice are contrary to the record. We reject Horwitz's arguments for reversal and remand, and affirm the circuit court's order denying her motions to correct the record, her motion to show cause, her motion for sanctions, and her motion that the District be found in criminal contempt. See Thomas Hake Enterprises. Inc. v. Betke. 301 Ill. App. 3d 176, 182 (1998) (primary consideration when reviewing a motion for sanctions is

whether the court's decision was based on valid reasoning and follows logically from the facts).

II. THE HEARING OFFICER'S FINDING THAT HORWITZ ENGAGED IN IRREMEDIABLE MISCONDUCT IS NOT AGAINST THE MANIFEST WEIGHTY [sic]OF THE EVIDENCE.

Illinois law recognizes two kinds of teacher misconduct that may constitute cause for dismissal: "remediable" conduct is that "misconduct by a teacher, in her ordinary course of duties, which, if called to her attention, can ordinarily be remedied." Younge v. Board of Education of the City of Chicago 338111. App. 3d 522, 532 (1993). "Irremediable" misconduct is that which causes damage to the students, the faculty or the school itself that could not have been corrected even if warnings had been given by the teacher's superiors. See Yesinowski v. Board of Education of Byron School District No. 226. 28111. App. 3d 119, 123 (1975).

Before a school district can terminate a tenured teacher who engages in "remediable" conduct, the district must provide a written "Notice to Remedy" of those "causes which, if not removed, may result in charges." 105 JLCS 5/24-12 (West 2004). The Code also requires a school district to permit the teacher a period of time to modify his remediable behavior before charges for termination may be issued. 105 ILCS 5/24-12 (West 2004). These procedural steps must occur before a school district can exercise jurisdiction over a termination proceeding. *See* Aulwurm v. Board of Education, 67 LII. 2d 434, 443 (1977). A school district need not take these steps if the teacher's conduct is deemed "irremediable."

The Illinois Supreme Court provided the test for determining whether conduct is irremediable in Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622, 67 III. 2d 143 (1977). In Gilliland, the Court affirmed the dismissal of a public school teacher who, repeatedly violated school board regulations over a four-year period. That case

describes the test for irremediabiity: whether the teacher's engaged in misconduct that (1) has caused significant damage to students, the faculty, or the school, and (2) could not have been corrected had superiors warned the individual charged. Gilliland, 67 Ill. 2d at 153. We note that individual acts, which may be separately remediable, may be deemed irremediable when considered in totality if they are long-continued. Board of Education of the City of Chicago. v. Harris, 218 III. App. 3d 1017, 1023 (1991).

A Hearing Officer's finding that a teacher engaged in irremediable misconduct is a question of fact. See *Gilliland,* 67111. 2d at 153. In Illinois, "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to *be prima facie* true and correct." 735 ILCS 5/3-110 (West 2004). Thus, we will accept the Heating Officer's findings that Horwitz engaged in irremediable misconduct as *prima face* true and will review these findings under a manifest weight of the evidence standard. See Gilliand 67 Ill. 2d at 153. Under the manifest weight of the evidence standard, a reviewing court will reverse a finding of fact only if the opposite conclusion is "clearly evident;" even when an opposite conclusion is reasonable or a member of a reviewing court might have ruled differently is not a sufficient ground for reversal of the agency's findings or decisions. Abrahamson 153 III. 2d at 88; see also Welcher v. Edgar. 195 Ill. App. 3d 406, 409 (1990). if any evidence in the record supports the agency's findings of fact, such findings are deemed not against the manifest weight of the evidence and must be sustained. Abrahamson, 153 111. 2d at 88; see also Loeck v. Edgar 180 Ill. App. 3d 332, 337 (1989).

A. Insubordination is a sufficient ground for dismissal.

Horwitz first argues that the charges against her are not sufficient to permit her dismissal. Section 10-22.4 of the Illinois School Code (the Code) provides that a tenured school teacher may be removed from employment only for cause. 105 ILCS 5/10-22.4 (West 2004). Although

the Code does not define "cause," Illinois courts have defined it as a "substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of services; something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position." McCullough v. Illinois State Board of Education 204111. App. 3d 1082, 1086-87 (1990). Insubordination was the gravamen of the District's complaints against Horwitz, and Illinois courts have previously found insubordination can be a sufficient ground for dismissal of a tenured teacher. See McCutcheon v. School Board of Education of the City of Chicano, 94111. App. 3d 993, 998 (1981). Given the lengthy period of time where Horwitz's behavior continued, we find that the allegations, if supported by sufficient evidence, would constitute sufficient grounds for termination for cause. Further, the record belies Horwitz's claims that she was dismissed for "arbitrary," "capricious," "political," or "discriminatory" reasons. While we need not discuss every single charge levied against Horwitz, we find that the evidence presented against Horwitz at the hearing was sufficient to support the charges of insubordination, which is a valid ground for termination. We now turn to that evidence.

B. Horwitz's lowering of a student's grade and her refusal to restore that grade constituted insubordination.

The Hearing Officer found that in 1998, Horwitz lowered S. E.'s grade in retaliation against that student's mother for complaining to the administration about Horwitz's teaching. Horwitz never remedied this misconduct by restoring S. E.'s grade, even when ordered to do so by the administration. The evidence against Horwitz includes, most damningly, her own letter to Mrs. E., dated December 3, 1998, where Horwitz admits that she downgraded S. E.'s report card based on her interactions with Mrs. E., rather than on S. E.'s performance m class. As the Hearing Officer succinctly stated, "[h]ad the mother not written that letter, the mark would not

have been reduced."

Although Horwitz asserted that her decision to lower S. E.'s grade was based on her own professional judgment, the Hearing Officer did not believe Horwitz. When, as here, a case rests largely on conflicting accounts of the same events, questions of fact are necessarily resolved by assessing the credibility of the witnesses. A reviewing court will not disturb the credibility findings of an administrative agency unless those findings are against the manifest weight of the evidence. See Lindsey v. Board of Education of the City of Chicago. 354 Ill. App. 3d 971, 987 (2004) (noting that as reviewing court, we "will not disturb the hearing officer's finding of credibility, nor would we invalidate the decision based on conflicting testimony" of the key witnesses).

Horwitz also refused to restore S. E.'s grade, even when instructed to do so by the administration. The administrators were forced to restore the grade themselves. The Heating Officer found that "Horwitz's refusal to change the grade as instructed was both insubordinate and unprofessional." Evidence that Horwitz's arbitrary and vindictive action harmed the District includes Mrs. E.'s subsequent requests that her daughter be removed from Horwitz's class, demonstrating that Horwitz dramatically reduced the trust that S. E.'s mother had in the District. Horwitz bred distrust between the school district and the parents by lowering S. E.'s grade and engaged in defiant acts of insubordination by not restoring that grade which caused significant damage to Avoca West that could not have been corrected. The Hearing Officer's found that Horwitz's actions in this regard constituted irremediable misconduct. See Gilliland. 67111. 2d at 153. In our view, his finding was not against the manifest weight of the evidence.

C. Horwitz's disclosure of a student record and failure to surrender that record constituted insubordination.

Avoca West's policies concerning the confidentiality of student records conformed with

the legal requirements of the Illinois School Student Records Act, 105 ILCS 10/2 (West 2004), (IS SRA), which prohibits the disclosure of student records except in specific proscribed ways. ISSRA defines a "student record," in relevant part, as being "any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored." 105 LLCS 10/2(d) (West 2004). Though factually distinct from the instant case, we note that in the case of Prato v. Vallas 331111. App. 3d 852, 864 (2002) (discharging a principal for disclosure of confidential student records), an Illinois court recognized that the improper disclosure of a student's educational records can be grounds for discharge.

Avoca West's policies concerning the confidentiality of student records conformed with the legal requirements of the Illinois School Student Records Act, 105 ILCS 10/2 (West 2004), (IS SRA), which prohibits the disclosure of student records except in specific proscribed ways. ISSRA defines a "student record," in relevant part, as being "any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored." 105 JLCS 10/2(d) (West 2004). Though factually distinct from the instant case, we note that in the case of Prato v. Vallas 331111. App. 3d 852, 864 (2002) (discharging a principal for disclosure of confidential student records), an Illinois court recognized that the improper disclosure of a student's educational records can be grounds for discharge.

There is no dispute that Karen Horwitz recorded a special education meeting, that she played the recording for members of the Avoca School Board, and that she refused to tender the tape to the school district, despite repeated instructions to do so. Horwitz raises several arguments

purporting to defend against this charge, but each of these arguments is unavailing.

Page 32

No. 1-04-1640

First, she argues that the recording is not a "student record" because she made the recording for her own "personal use." Although LSSRA excepts records made for "personal use," "personal use" is defined as being "exclusive" to the individual. See 105 LLCS 10/2(d) (West 2004). Horwitz, however, disclosed the recording to Board members.

Horwitz also argues that her actions ought to be excused because the Board members themselves asked her to play the tape. The Hearing Officer, however, found that Horwitz made the decision to play the tape willingly and in her own interest, rather than doing so to comply with an official Board directive. This finding is supported by Horwitz's own statements that she intended to use the tape to reveal "teacher abuse" by the administration. The Heating Officer's finding is not against the manifest weight of the evidence, as it is based on part his assessment of Horwitz's credibility, which we will not disturb. See Lindsey 354111. App. 3d at 987.

Horwitz also argues that the student's parents authorized the disclosure after the fact. JSSRA, however, requires that any authorization must come before the disclosure. See 105 ILCS 10/6 (West 2004) (requiring prior, specific, dated, written consent from the student's parent before disclosure may occur). B. B.'s parents provided a general release after the fact; this is not a valid authorization disclosure. Thus, the Hearing Officer's finding that Horwitz's disclosure violated District policy was not against the manifest weight of the evidence.

Horwitz also argues that it was proper for her to await the instant administrative hearing to determine whether she had the legal right to keep the tape. Again, the Hearing Officer disagreed, and found that Horwitz's failure to tender the recording constituted insubordination. At the hearing, evidence showed that the Board and the administration made repeated requests for Horwitz to surrender the recording. The

Hearing Officer determined, based in part on his assessment of the credibility of the District's witnesses, that the District's request for the

recording was based on its attempt to comply with its record-keeping policy rather than being an attempt to harass Horwitz. This finding is supported by Biancalana's testimony that the District maintained student special education records consistent with state law and that they viewed the recording as a student record. Horwitz's argument that she needed to maintain the tape for a future hearing is unpersuasive. If the tape were needed at trial, it would have been available through the discovery process. Horwitz's fear that the District would tamper with the recording could have been addressed by seeking a protective order from the court. Again, we find that the Hearing Officer's finding was not against the manifest weight of the evidence.

Evidence that Horwitz's refusal to submit the tape caused harm to the District came from many sources, including Board President Ballantyne, who testified as to the time, money, and energy expended in the attempt to get the record from Horwitz. Special Education Director George Tuttle also testified that this was an example of Horwitz's lack of respect for the special education process, which reduced parents' faith in the school's ability to support special education services. The Heating Officer found that Horwitz's actions constituted insubordinate and unprofessional behavior that was irremediable. In our view, his findings are not against the manifest weight of the evidence.

D. Horwitz engaged in a long history of unprofessional and insubordinate activity.

The Hearing Officer also found that Horwitz's long history of insubordinate and unprofessional conduct damaged the school environment. First, the Hearing Officer found that Horwitz was insubordinate for refusing to provide medical certificates explaining her half-day absence on March 2, 1999, and her extended absence from mid-March to late-

April 1999. While Horwitz claims that these requests violated her tights to medical privacy, Illinois law explicitly gives the school district the right to request such a certificate. See 105 ILCS 5/24-6 (West 2004)

(a local school board may require a teacher to submit a physician's certificate in order to justify sick leave). The Hearing Officer found that the Board's request was reasonable and not intended to harass. This finding is not against the manifest weight of the evidence, especially considering that Horwitz had previously taken extended and open-ended medical leave and had provided only vague statements about the "medical condition" that kept her from working.

As the Hearing Officer noted, Horwitz never explained her half-day absence on March 2, 1999. Also, though Horwitz submitted letters stating that her extended absence owed to "medical reasons," the Hearing Officer found that these letters did not provide sufficient detail. It is undisputed that Sloan requested a certificate from Horwitz for over a month requesting before receiving any memo disclosing Horwitz's medical condition and that Dr. Ciganek's memo of April 23, 1999, stated only that Horwitz had "Major Depression." Though Horwitz claims that this was sufficient, the Hearing Officer's finding that Horwitz needed to provide more medical detail is consistent with the requirements of the School Code. See de Oliveira v. State Board of Education 158 ill. App. 3d 111, 123-24 (1987) (affirming the dismissal of teacher, whose leave of absence was supported by a doctor's note stating that the teacher was "under active medical treatment;" because the memo "contained nothing of a substantive nature to evidence a medical examination which conclusively established plaintiff's temporary mental incapacity to perform her teaching duties," it "was insufficient to inform the defendants of plaintiff's alleged temporary mental incapacity"). That Horwitz may have been unable to teach due to severe depression did not excuse her from following the directives

of the District to provide a timely and meaningful medical certificate. See de Oliveira.. 158 111. App. 3d at 124. The Hearing Officer's finding was consistent with the Code and was not against the manifest weight of the evidence.

Also, Biancalana testified that it was customary practice for teachers to work out a plan

Page 35

No. 1-04-1640

with the Principal for extended absences, including providing lesson plans for substitutes and checking regularly with the Principal. Biancalana testified that Horwitz's lesson plans were inadequate, which caused her pupils to lose valuable instructional time. This evidence also supports the Hearing Officer's findings that Horwitz harmed the school community.

Horwitz also refused to submit to psychological testing, despite repeated instructions to do so by the administration. Although Horwitz argues that this was an attempt to harass her and that she had complied with this request, the Hearing Officer believed the District's witnesses who testified that they requested the tests for lawful reasons. The School Code permits a school board to "require an examination of any employee by a physician licensed in Illinois." 105 ILCS 5/25-5 (West 2004). This includes psychiatric examinations. See Tetmeir v. Board of Education of School District No. 149 5 Ill. App. 3d 982, 986-87 (1972). Though Horwitz met with Dr. Fink once, his report stated that Horwitz ought to undergo additional tests. The Hearing Officer found that Fink was unbiased and that the District's order that Horwitz submit to additional tests was due to Dr. Fink's unbiased report. The Heating Officer's finding that Horwitz was insubordinate for not submitting to psychological tests is not against the manifest weight of the evidence.

The record is rife with other examples of Horwitz's insubordination and unprofessional conduct. For several months, Horwitz refused to participate in Board-ordered conflict resolution. She was a source of disruption on the fourth grade teaching team. She demeaned a veteran fifth

grade teacher in writing to the Board. She accused those criticized her as being "Stepford teachers," and "quislings." After being repeatedly warned about treating fellow faculty members with respect, she drove a teaching assistant to quit by criticizing her in front of students in the classroom. In a letter to the Board, she referred to teaching as a "pseudo profession" and implied that she was better than the instructors who had to "work for a living." She constantly berated

the administration and the Board with unprofessional and abusive language, including accusing them of committing "atrocities," "psychologically rap[ing]" her, and operating in "gang style."

The Hearing Officer's finding that Horwitz's insubordination banned the District is not against the manifest weight of the evidence. The collective negative impact of her actions seems obvious, but is further supported by the testimony of the faculty, administration, and members of the Board describing the ill will generated by Horwitz's conduct and the damage to the morale and reputation of the teachers whom Horwitz accused of being in league with the administration.

Horwitz cites Board of Education of the City of Chicago v. Harris. 218 III. App. 3d 1017 (1991), as a point of contrast to the instant case. Horwitz argues that unlike the teacher in ~ she remediated her misconduct by curbing her impertinent speech, submitting to an interview with Dr. Fink, and participating in a mediation session with the administration. The Hearing Officer, however, found that Horwitz's misconduct had gone on for so long that it was irremediable. This finding is not against the manifest weight of the above-cited evidence. Further, as the Hearing Officer noted, while Horwitz took steps to remediate some instances of insubordinate behavior, other instances were never corrected and continued right up to the time of her termination, including Horwitz's refusal to restore S. E.'s report card, her refusal to tender the recording of B. B.' s

special education conference, her refusal to submit to additional psychological testing, and her failure to account for the March 2, 1999, half-day absence. Such "a pattern of disrespect for school policy and insubordination to school personnel in the face of repeated attempts to persuade a teacher to follow established procedures and policy" constitutes irremediable misconduct. McCutcheon 94111. App. 3d at 998.

Whether a teacher's conduct constitutes good cause for termination is a question of fact to be determined by the hearing officer. Board of Education of Round Lake Area Schools.

Page 37

No. 1-04-1640

Community Unit School District No. 116 v. State Board of Education, 292 Ill. App. 3d 101, 109 (1997) (noting that the role of an appellate court on administrative review is to examine the administrative decision, not the circuit court decision). In our view, the Hearing Officer's determination that there existed good cause for Horwitz's termination is supported by substantial evidence in the record. We affirm the Heating Officer's order and the Circuit Court's order affirming the Hearing Officer. We also affirm the Circuit Court's order denying Horwitz's motions to reconsider.

III. THE CIRCUIT COURT PROPERLY DENIED HORWITZ'S MOTION TO LIMIT THE RECORD ON APPEAL.

Illinois Supreme Court Rule 321 defines the record on appeal as consisting of "the judgment appealed from, the notice of appeal, and the entire original common law record, unless the parties stipulate for, or the trial court, after notice and heating, or the reviewing court, orders less." *155* Ill. 2d R. 321. Rule 321 defines the common law record as including "every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party," and that the record on appeal should include "any report of proceedings prepared in accordance with Rule 323." 155 111. 2d R. 321.

In this case, the parties did not stipulate to a limited

record. The circuit court denied Horwitz's motion to permit her to use a truncated record, which Horwitz argues denied her the right "to a less expensive appeal." In our view, the circuit court properly denied Horwitz's motion. Given the nature of the charges and the nature of Horwitz's purported defenses, it was necessary to transfer the entire administrative record and the record developed before the circuit court. See Kozsdiy v. O'Fallon Board of Fire & Police Commissioners. 31 Ill. App. 3d 173, 177 (1975) (noting that an incomplete administrative record "leaves [a reviewing court] in the position

Page 38

No. 1-04-1640

of guessing what the Board deemed relevant in deciding to discharge the appellant. *** In short, it is impossible for us to fulfill our function under the purpose and policy of the Administrative Review Act without knowing the reasons for the appellant's discharge"). Further, Horwitz makes no claim of indigence, thus it was not error for the Circuit\Court to require Horwitz to bear the cost of this transcription and transfer. See Leary v. Eng. 214 Ill. App. 3d 279, 285 (1991) ("Generally, the assessment of costs rests within the sound discretion of the trial court."); Bank of Homewood v. Chapman 258 Ill. App. 3d 732, 737 (1993) ("It is proper and constitutional for courts in the State of Illinois to collect costs and fees from litigants."); see also Kennedy v. State Public Utilities Comm'n. 286 111. 490, 495 (1919) (noting that "where there is such an appeal the duty of filing the transcript of the record rests upon the appellant"). We hold that the Circuit Court's order denying Horwitz's motion to limit the record on appeal and "Motion to Order Defendant to Pay for any Unnecessary Records" was not an abuse of discretion.

CONCLUSION

For the foregoing reasons, we hbld that the administrative heating did not violate plaintiffs due process tights, that the Board's finding that plaintiff engaged in irremediable misconduct was not against the manifest weight of the evidence, and that the circuit court properly affirmed the Board's order and properly ordered the transfer of the

entire administrative record to the Appellate Court. We affirm the order of the Illinois State Board of Education and the orders of the circuit court.

Affirmed.

O'MALLEY, J., with TULLY, J., and FITZGERALD SMITH~, J., concurring.

Page 39

Petitioner's Appendix C

Karen Horwitz v. Illinois State Board of Education. Stephen B. Rubin and Board of Board of Education of Avoca School District No. 37, Cook County Illinois

02 CH 14237

BY DONALD J O'BRIEN
October 30, 2003
Circuit Court

Memorandum Opinion

This cause comes before this court on plaintiff Karen Horwitz (hereinafter "Horwitz") Complaint for Administrative review pursuant to 735 ILCS 5/101 et seq.

On April 23, 1999 the Avoca School Board approved dismissal charges and specifications against Karen Horwitz , a tenured teacher pursuant to section 5/10-22.4 of the Illinois School Code. 105 ILCS 5/10-22.4. The charges and specifications alleged that plaintiff; 1) engaged in a pattern of insubordinate conduct by failing to comply with Board directives in the third notice of remedial warning to submit to psychological testing, and also failed to comply with Principal Venette Biancalana's directive to cease retaliating against a fifth grade student, 2) engaged in a pattern of unprofessional conduct, in that she displayed inappropriate conduct in communicating and interacting with the Principal, repeatedly demeaned and undermined the competency and performance of colleague teachers and staff members, and failed to cooperate with colleagues and grade level team members. 3) engaged in intimidating behavior with support personnel by treating a child in an intimidating and demeaning manner in retaliation for her parent's calling the children "misfits" and "loud mouth", and 4) refused to provide medical certificates and records. (R 1-18, 6778-6781).

On August 5, 2002, Plaintiff filed the instant Administrative Review action, in response to the Board of Education's decision against her interest.

CO9238

Discussion:

Under the Administrative Review Law, courts generally do not interfere with an agency's discretionary authority unless the exercise of that discretion is arbitrary or capricious or the agency action is against the manifest weight of the evidence. See Murdy V. Edgar, 103 Ill.2d 384 (1984). The role of the court upon administrative review is to determine whether the findings of the commissioner are contrary to or against the manifest weight of the evidence. See Jager V. Illinois Liquor Control Com. 74 Ill.App.3d 33 (1979), and the courts cannot reweigh the evidence or make an independent determination of facts. When reviewing the findings of an administrative hearing, the findings and conclusions of that body on question of fact are taken as prima facie true and correct. See 735 Ill.Comp.Stat. 5/3-110 (2002). A finding is against the manifest weight only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary or not based on the evidence. See Rhodes V. Illinois lectern, 172 Ill.2d 213. If the record contains any evidence which fairly supports the agency's decision, such decision is not against the manifest weight of the evidence and must be sustained upon review. Conklin v. Ryan, 242Ill.App/3d at 37.

This court will first address the issues of violation of due process rights and bias on the part of the hearing officer which Plaintiff Horwitz has raised. In administrative hearings, due process is satisfied by procedures that conform to fundamental principles of justice; procedural due process includes notice of what claims will be presented at hearing and what consequences will result. Aloha. Inc. v. Liquor Control Commission, 191 Ill.App.3d 523 (4th Dist., 1989). Specifically, in administrative proceedings, due process is satisfied when the party concerned is provided opportunity to be heard in an orderly

proceeding which is adapted to the nature and circumstances of the dispute. See General Service Employees Union Local 73. SEIU, AFL-CIO, CLC v. Illinois Educational Labor Relations Bd., 285 111.App.3d 687 (1st Dist., 1996). Accordingly, an administrative body has broad discretion in

conducting its hearings and an agency's decision regarding the admission of evidence is discretionary and will not he disturbed on review absent an abuse of discretion. Foley v. Metropolitan Sanitary District, of Greater Chicago 213 Ill.App.3d 344 (1st Dist., 1991). The hearing in the instant action lasted for 24 days and over 8400 pages of record. (See ISBE's response pg. 13 and Avoca's Response pg 14) Further, with respect to the delay in issuing a ruling, Horwitz agreed to extensions of time.(R. 5343 & 8354). Because the hearing officer's admission of evidence as the officer conducted a 24 day hearing and allowed both parties to present approximately 15 witness'. Thus in this court's opinion, the hearing officer did not abuse his discretion in admitting evidence, was not biased toward's [sic] plaintiff and provided plaintiff an opportunity to be heard.

Plaintiff Horwitz next contends that her rights to free speech were violated. Defendants raise the issue of Re Judicata and because this is a question of law it will be reviewed de novo. City of Belvidere v. State of Illinois, 181 Ill.2d 191 (1998). Res Judicata applies when there is: 1) a final judgment rendered by a court of competent jurisdiction; 2) an identity of parties; and 3) an identity of causes of action. People v. Progressive Land Developers, Inc., 151 Ill.2d 285 (1992). Horwitz's previously filed a complaint regarding publication of her essay as being the cause for her dismissal and that

action was adjudicated in federal court and a finding was made by the 7th Circuit that the "Horwitz complaint does not adequately explain how the Board maintained a policy or custom that was directed at suppressing her free speech. Thus, the claim against the Board was properly dismissed". See Horwitz v. Board of Education of Avoca School District. No. 37, 260 F.3d 602 (7th Cir. 2000). Thus, with respect to the issue of plaintiff's free speech rights, an identical cause of action has been previously litigated between the same parties as in the administrative review action and a final judgment rendered and it is res judicata.

Plaintiff's next contention is that the decision of the Board was against the manifest weight of the evidence.

Section 10-24.2 of the Illinois School Code empowers a Board to "dismiss a teacher for incompetency, cruelty, negligence, immorality, or other sufficient cause....and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the school require it..." 105 ILCS 5/10-22.4/ Section 24A-5 of the Illinois School Code authorizes dismissal for actions "deemed irremedial or for actions which are injurious to or endanger the health or person of students in the classroom or schools." 105 ILCS 5/24A-5. The test for irremediability is; 1) whether the damage has been done to the students, faculty, or school and; 2) whether the conduct resulting in damage could have been corrected had the teacher's superiors warned her. Gilliland v. Board of Education of Pleasant View Consol. Sch. Dist. No. 622 of Tazewell County; 67 Ill.2d 143 (1977). Conduct which originally was remedial in nature, can become irremediable if continued over a long period of time. Gilliland and DeOliveira V. State Board of Eduction[sic], 158 Ill.App.3d 111 (2nd Dist., 1987).

Further, insubordination is a willful or intentional disregard of a lawful and reasonable instruction of the employer. Board of Educ. Of Round Lake Area Schs. V. Community UnitSch. Dist. No. 116, 292 Ill.App.3d 101 (2nd Dist., 1997) Illinois Courts have consistently found that insurbordination [sic] is ground for dismissal of a teacher. Id. Intentional insurbordination [sic] provides cause to determine conduct irremediable because "once the willful violation has occurred the damage has been done". Yuen v. Board of Education, 77 Ill.App.33d 353 (2nd Dist., 1996) A teacher conduct which exists despite many oral and written warnings by the administration may become irremediable. See Board of Education of the City of Chicago

In the instant action the record supports conduct which demonstrates insubordination on the part of plaintiff Horwitz. Plaintiff refused to report to the principle's [sic] office when asked to do so. (R.1493, 1496-97). Plaintiff has left the school building without notice or permission. (R 1492-1493). Plaintiff tape recorded a pupil services meeting

and refused to provide a copy of the student record to the administration. (R.2717-2728). During the 1998-1999 school year plaintiff lowered a student' grade solely in response to comments made by a child's mother. (R. 1358-1369). Plaintiff refused to restore the original grades despite express directions by the principal to do so. (R 1369). Plaintiff admitted that she refused to comply with the principal's directions to change the child's grade back. (R4937)

The record further indicates insubordination by plaintiff's refusal to participate in a conflict resolution process with the Principal and Superintendent Sloan. (R. 3139, 3151, 4731, 5204, 5912-5916, 6702, 6706-6709). When Horwitz refused to enter into conflict resolution for a third time, the Board renewed its direction. (R.5850 &5946).

Thus, there is substantial evidence in the record to support the hearing officer's finding of insurbordinate [sic] conduct on the part of plaintiff Horwitz.

Further, the record is replete with evidence that plaintiff Horwitz engaged in unprofessional conduct and intimidating behavior. The plaintiff engaged in distractive behavior, regular disruptive conduct and verbal outbursts. (R1217, 1490-1493, 1503-1518, 1519-1522, 1597-1598; 2157-2164, 2333-2334, 5850). Plaintiff refused to participate in lessons in her classroom prepared by visiting presenters. (R. 1546 & 6130). Plaintiff was repeatedly admonished regarding her treatment of others. (R. 355, 357-363, 372, 404, 405, 388-390. 439-440, 1147, 1168, 1547-1549, 1985-1992, 2674, 3720, 6120-6121). Plaintiff was warned about disseminating information about students and faculty to the general public. (R. 410, 2366-2368, 5692, 5713-5716, 6046, 6274).

The record also supports plaintiff's intimidating behaviour towards other teachers. (R.1143-1145, 1151, 1553-1560, 1157-1167,5282-5283, 5850, 2042-2046).

Thus, the record also supports the hearing officer's finding of unprofessional and intimidating behavior on the part of plaintiff Horwitz. Once again therefore, if the record contains any evidence which fairly supports the agency's

decision, such decision is not against the manifest weight of the evidence and must be sustained upon review. Conklin v. Ryan, 242 Ill.App.3d at 37.

The test for irremediability is; I) whether the damage has been done to the students, faculty, or school and; 2) whether the conduct resulting in damage could have been corrected had the teacher's superiors warned her. Gilliland V. Board of Education of Pleasant View Consol Sch. Dist. No. 622 of Tazewell County; 67 Ill.2d 143 (1977). Conduct which originally was remedial in nature, can become irremediable if continued

9243 6

over a long period of time. Gilliland and DeOliveira v. State Board of Eduction,[sic] 158 I11.App.3d ill (2n~~ Dist., 1987). Intentional insubsordination [sic] provides cause to determine conduct irremediable because "once the willful violation has occurred the damage has been done". Yuen v. Board of Education, 77 Ill.App.33d 353 (2nd Dist., 1996). A teacher's conduct which exists despite many oral and written warnings by the administration may become irremediable. See Board of Education of the City of Chicago. As already demonstrated above plaintiffs conduct extended over a long period of time, plaintiff received multiple warning regarding her conduct and plaintiff's conduct did cause damage to the school and other teachers. Thus, the record also supports a finding of irremediable behavior on the part of plaintiff Horwitz.

Thus, hearing officer Rubin's findings that plaintiff Horwitz's conduct was unprofessional, insubordinate and irremediable were not against the manifest weight of the evidence and is fairly and adequately supported by the record.

Conclusion:

Plaintiffs Complaint for Administrative Review is denied and the decision of hearing officer Rubin is affirmed.

10/30/03

9244 7 ENTER,

s/_____

Judge Judge's No.

Karen Horwitz v. Illinois State Board of Education. Stephen B. Rubin and Board of Board of Education of Avoca School District No. 37, Cook County Illinois
02 CH 14237
Memorandum Opinion

This cause comes before this court on plaintiff Karen Horwitz's Motion to Reconsider judge O'Brien's decision affirming Hearing Officer Rubin's finding that plaintiff's behavior was unprofessional, insubordinate and irremediable.

Plaintiff contends in her Motion to Reconsider that the hearing officer participated in a felony by knowingly delivering a forged document into the Record. Further, plaintiff posits that she received five less days than the Board to present evidence and that the officer's refusal to hear testimony pertaining to the Board's behavior fails to fulfill the Code which guarantees that a dismissal will not be political or capricious. Plaintiff Horwitz further contends that she was remediated in that she refrained from using disrespectful terminology against her superiors and followed these orders until after she was terminated.

The purpose of a Motion to Reconsider is to bring to the court's attention to newly discovered evidence, changes in the law or errors in the court's previous application of existing law. Newly discovered evidence is evidence that was not available prior to the hearing on the motion. motion. Sec Landeros v. Equity Property Development, 321 IILApp.3d 57 1" Dist. 2001] and Gardner v. Navistar, 213 Ill.App.3d 242 (4thDist. 1991.)l and Chelkova v Southland, 331 1Il.App.3d 716 (1st Dis. 2002). No newly discovered evidence has been brought forth by plaintiff. While plaintiff Horwitz has not stated it directly, her argument in essence is directed to the court's misapplication of existing law.

Due process is satisfied by procedures that conform to fundamental principles of justice; procedural due process includes notice of what claims will be presented at hearing and what consequences will result. Aloha. Inc. v. Liquor Control Commission 191 111.App3d 523 (4th Dist.,1989). Specifically, in administrative proceedings, due process is satisfied when the party concerned is provided opportunity to be heard in an orderly proceeding which is adapted to the nature and circumstances of the dispute. See General Service Employees Union Local 73, SEIU, AFL-CIO, CLC v. Illinois Educational Labor Relations Bd.. 285 11f.App3d (1st Dist., 1996). Accordingly, an administrative body has broad discretion in conducting its hearings, and an agency's decision regarding the admission of evidence is discretionary and will not he disturbed on review absent an abuse of discretion.. Foley Metropolitan Sanitary District. of Greater Chicago 2 13 111.App.3d 344 (1st Dist., 1991).

The argument alleging criminal conduct never having been previously raised is waived. Assuming arguendo that it was not waived, the record does not support plaintiff's allegations. As regards plaintiff's allegations that she had 5 less days to present evidence, the hearing in the Instant action lasted for 24 days and is over 8400 pages of record. Plaintiff put on 19 witnesses in her case in chief and the School District put on 14. Plaintiff herself was on the stand for 5 days in her case-in-chief. (Sec ISBE's response pg. 13 and Avoca's Response pg. 14) Thus, in this court's opinion due process was satisfied.

Further, plaintiff also contends that because she was ordered to refrain from using terminology against her superiors and that she did refrain until after she was terminated that she was remediate. (Motion pg.7) The test for irremediability is; 1)whether the damage has been done to the students, faculty, or school and; 2) whether the conduct resulting in damage could have been corrected had the teacher's superiors warned her. Gilliland v. Board of Education of Pleasant View Consol Sch. Dist. No. 622 of Tazewell County; 67 Ill.2d 143 (1977). Conduct which originally was remedial in nature, can become irremediable if continued over a long period of time. DeOliveira v. State Board of Eduction [sic], 158 IllApp.33d 353 (2nd Dist., 1987). Intentional insubordination provides cause to determine conduct irremediable because "once the willful violation has occurred the damage has been done". Yuen v Board of Education, 77 Ill.App.33d 353 (2nd Dist., 1996). The evidence presented in the record indicates insubordinate conduct on the part of plaintiff Horwitz which was damaging to the school. (See O'Brien memorandum Opinion pgs. 5-6). Further, the conduct continued over a long period of time and inflicted damaged [sic] on the school and was therefore irremediable. (See O'Brien memorandum Opinion pgs. 5-7) A teacher's conduct which exists despite many oral and written warnings by the administration may become irremediable. See Board of Education of the City of Chicago.

The role of' the court upon administrative review is to determine whether the findings of the commissioner are contrary to or against the manifest weight of the evidence. See Jager v. Illinois liquor Control Com. 74 111.App.3d 33 (1st Dist. 1979) The courts cannot reweigh the evidence or make an independent determination of facts. When reviewing the findings of an administrative hearing, the findings and conclusions

of that body on questions of fact are taken as prima facie true and correct See 735 ILCS.5/3-110 (2002). A finding is against the manifest weight only when an opposite conclusions apparent or when findings appear to be unreasonable, arbitrary or not based on the evidence See Rhodes v. Illinois Lectern 172 lll.2d 213 (1996) If the record contains any evidence which fairly supports the agency's decision, such decision is not against the manifest weight of the evidence and must be sustained upon review, Conklin V.Ryan 242 Ill..App.3d 32 (4th Dist., 1993).

In the instant action, there is evidence to support the hearing officer's decision (Sec O'Brien Memorandum Opinion entered on October 30, 2003). This court cannot reweigh the evidence or make an independent determination of facts. If the record contains any evidence which fairly supports the agency's decision, such decision is not against the manifest weight of the evidence and must he sustained upon review. Conklin v. Ryan. 242 ill App.3d at 37 As stated by Judge O'Brien in his Memorandum Opinion, hearing officer Rubin's finding that plaintiff's Horwitz's conduct was unprofessional, insubordinate and irremediable was not against the manifest weight of the evidence and is fairly and adequately supported by the record. Since Judge O'Brien's Memorandum Opinion of Oct. 30, 2003 the law did not change, no newly discovered evidence has been presented nor did Judge O'Brien misapply the law. The Court further finds that plaintiff's allegations in her Motion for Sanctions against Defendants are not supported by the record.

Therefore, Plaintiff's Motion to Reconsider is denied and Plaintiff's Motion for Sanctions is denied.

Petitioner's Appendix D

BEFORE THE
ILLINOIS STATE BOARD OF EDUCATION

In the Matter of the Dismissal of

Karen Horwitz
Respondent

Stephen B. Rubin, Hearing Officer
By
Board of Education of Avoca School District 37

Petitioner

DECISION

This matter is before the undersigned Hearing Officer on the Charges and Specifications adopted by the Petitioner School Board on April 23, 1999 against the Respondent Teacher. On April 28, 1999 the Teacher demanded a hearing on those charges. The Hearing Officer has jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/24-12 and Illinois Administrative Code.

THE CHARGES

The Charges adopted by the Board allege a pattern of insubordination and a pattern of unprofessional conduct. The specifications include the allegations that the Teacher showed disrespect toward her principal and the District's Superintendent and toward parents and students, that she demeaned students, retaliated against a parent and her daughter because of a perceived difficulty with the parent, that she failed and refused to cooperate with fellow staff members, the principal and the Superintendent, that she disobeyed direct orders and in other respects as set forth herein.

The issue before the Hearing Officer is whether these

charges should be upheld and, if so, whether they constitute grounds for dismissal. If not, the Teacher should be reinstated and made whole.

PROCEDURAL HISTORY

Judge Henry X. Dietch was appointed to hear this matter on June 25, 1999. Judge Dietch held a prehearing conference between the parties on September 27, 1999. Thereafter, the District filed a motion to bar use of an audio tape which it alleged was unlawfully retained by the Teacher, to which the Teacher responded. The District also filed a motion to bar use of expert witnesses by the Teacher, to which the Teacher again responded. Judge Dietch

recused himself due to the prospective length of the proceedings and his ability to deal with that task. A conference with the parties was then conducted by Eugene M. Daly, Assistant Legal Advisor for the State Board, on October i8, 1999. The undersigned Hearing Officer was appointed to replace Judge Dietch on February 15, 2000. On March 3, 2000 a notice of hearing was issued. Thereafter, a dispute arose with respect to the location of the hearing. The Teacher also filed motions for the Hearing Officer to review the rulings of Judge Dietch on the matters of the audio tape and expert witnesses. On April 4, 2000 the Hearing Officer issued his order setting the place of hearing. The Hearing Officer reserved ruling on the Teacher's request to review the prior evidentiary rulings.

The hearing commenced on May 15, 2000 in Northfield, Illinois and continued at that location on May 16, 18, 25, 26, 30 and 31, June 1 and 2. The hearing resumed at the Marie Murphy School, one of the District's schools in Wilmette, Illinois on July 5, 6, 10, 11, 12, 13 and 31, August 1, 2, 7, 8, 10, 14, 15 and 16, at which time the hearing was adjourned *sine die* pending receipt of briefs. On July 7, while the hearing was in recess, the Hearing Officer issued his

order with respect to the evidentiary motions. The Hearing Officer ruled that the contents of the tape, as opposed to the fact of its existence, were irrelevant to the matters in controversy and that expert testimony could be adduced only to rebut the expert evidence offered by the District and not on other subjects.

Several hundred exhibits were offered by the parties and received in evidence. Other exhibits were offered and rejected.

Each of the parties filed a post-hearing brief and a reply brief, the last of which was dated October 27, 2000, at which time the hearing was closed.

In light of the length of the record and the complexity of the issues, the parties have stipulated to certain extensions of time for the issuance of this Decision. The District (also-referred to herein as "the Board") has agreed to a further extension to July 1, 2002. On June 21, 2002 counsel for the teacher wrote to the hearing officer: "Without waiving any of my clients [sic] rights under law ... this letter will serve to notify you that we want you to issue this decision ... on or before July 1, 2002."

THE FACTS

At all times material to this Decision, the District operated two schools at the intersection of three Chicago suburbs on its North Shore. Avoca West School contains a kindergarten through fifth grade. Marie Murphy School provides education through eighth grade. The District offices are also located at Marie Murphy School. The principal of Avoca West was Venette (Vinnie) Biancalana.

The District's Superintendent was Dr. John W. Sloan. The President of the Board was Dorothy H. Balantyne.

Karen Horwitz was hired by the District as a full-time

teacher at Avoca School beginning with the 1993-1994 school year.[1] She was then 48 years of age and married to Jeffrey Horwitz, an attorney who, for a time, acted as her legal advisor and representative. Mrs. Horwitz was assigned to teach the fourth grade until the beginning of the 1997-1998 school year. Some of the teachers at Avoca were younger and less experienced than Horwitz. Although not the oldest, nor the most experienced, of the teachers at Avoca, Horwitz identified herself in a group separate from the younger persons, among whom she numbered Biancalana.

During the 1993-94 school year there were few alleged problems. Horwitz was counseled by the Superintendent with respect to giving adequate time to parents' concerns and the nature of her communications with parents. It was also alleged by the District that she had been discourteous to a parent and his child and had described another student as "stupid." Biancalana counseled her on these incidents.

1994-1995

During the 1994-95 school year a dispute arose over Mrs. Horwitz' failure to make available to the other fourth grade classes a field trip for her class to the Botanic Gardens. There was a teacher complaint that Mrs. Horwitz had discussed student information openly in the teacher lounge.

The main dispute during the 1994-95 school year centered around Mrs. D, a food service worker at Avoca, and her son who was in Mrs. Horwitz' class. On April 7, 1995 the mother sent a letter to Biancalana complaining of Mrs. Horwitz' treatment of the student and expressing her fear of retaliation. The teacher drafted a three page letter to the parent dated April 11, which Biancalana refused Horwitz permission to send, insisting rather that the differences should be discussed in person.[2] The Principal attempted to

---

[1] Horwitz had previously acted as a part-time teacher for the District

[2] Among other things, this letter implied that the student's behavior problems which had recurred had to do with the mother's attitude toward Horwitz. "Parental undermining is a sure way to encourage bad

resolve problems with the student's homework by asking Horwitz to bring the student's assignment sheets to her every Friday. Horwitz was resistant to having the Principal looking over her shoulder to such a degree and expressed it. Biancalana received further reports of the problems between Horwitz and Mrs. D, including the mother's complaint that Horwitz had rudely hung up on a telephone conversation. Further efforts by Biancalana to calm the situation met with failure. Horwitz resisted Biancalana's efforts to schedule meetings to

discuss this situation.[3] On the other hand, Horwitz thanked Biancalana for her assistance in this matter. "As I had told you, I knew I could handle [the student] as long as we have [the mother's] support. Since I could not get her support due to her deep seated hostility toward me, working as a team was the only way.

Biancalana and Horwitz met on June 7. The meeting was a dismal failure.[4] Horwitz abruptly walked out. In a letter to Biancalana dated June 7 Mrs. Horwitz attributed her sudden behavior to a cardiac condition and her doctor's advice to avoid stress. She wrote about her pedagogical accomplishment and stated:

> Although I know we have different paradigms for education, I believe that my teaching style is well liked by many Avoca parents as evidenced by feedback I have received. I do believe that we can arrive at an

---

behavior." (Board Exhibit 7)

[3] Other matters which led to the *contretemps* included an assignment in which the student was to obtain information from the Canadian consulate. Mrs. Horwitz inadvertently supplied an erroneous address. The parent and the child were upset when they attempted to visit the consulate instead of corresponding with it. An unpleasant discussion between the teacher and the mother also occurred in the lunchroom about an alleged petty theft by the student

[4] According to Biancalana's written account, Horwitz said she would not listen and called the Principal a liar.

amicable working relationship and that many of the parents would be disappointed if we did not. I need you to modify your style and only bring me in for issues that are worthy of writing up so as not to jeopardize my health with issues based on hearsay. That way, if we disagree, I can take the issue to the Board in accordance with the procedures put forth in the Contract [with the Teachers Union]. Your method of putting forth accusations coming from others that are unfounded without giving me an opportunity for recourse is most stressful and, I therefore need to remove myself from this stress for health reasons.[5]

In a letter dated June 8 Biancalana documented Horwitz' behavior of the day before, characterizing it as "gross insubordination."

> As your supervisor, when I direct you to report to the principal's office you will appear as directed. After appearing you will listen to the direction I provide you until you are dismissed from the session and you will respond in a professional and respectful way. Failure to comply with these simple directives will constitute continuing gross insubordination which is totally unacceptable.

On June 16 Horwitz responded in writing. She attached the Faculty
Rights portion of the collective bargaining agreement with the teachers union, a letter from her cardiologist, Dr. David Campbell, and a copy of her letter dated June 7. In his letter Dr. Campbell recited that Mrs. Horwitz had been under his care for the previous month for coronary artery disease with angina, that she
was under medication for the condition and that she had been

[5] This peculiar blend of expressed fragility, implied threats of legal or other remedial action and condescension characterized Horwitz' vast correspondence with Biancalana.

warned against

stressful situations. Dr. Campbell's letter stated that the limitation was anticipated to be of short duration. Mrs. Horwitz' letter averred that she had undergone an angiogram on June 12, which confirmed the diagnosis of a blocked coronary artery and that in a conversation in April she had told Biancalana of her delicate condition. Horwitz continued that she had anticipated that the June 7 meeting would have been non-stressful for that reason. That there was a confrontation surprised her and caused her to withdraw as she did. She denied insubordination. Relying on the collective bargaining agreement, she invoked the right to be accompanied and represented whenever she was called into a disciplinary interview. Finally, Horwitz claimed that she was loyal and devoted to the job because she had "worked for over three weeks at great personal risk after I had strong suspicions about my health condition." She also noted that she had made her house available for a year-end staff party. She stated that she was awaiting "further written comments" but asked not to have any personal meetings for approximately 30 days while she convalesced.

On August 1 Biancalana forwarded to Horwitz a letter which she had drafted on June 12 setting forth the points that she had been unable to discuss on the 7th.

> 1. Staff members are expected to work collegially with outside support people. At a meeting with Dr. Grieske [an outside psychologist for a student with an Individualized Education Program (IEP)], comments were made like "It's just too much work", "I'm supposed to do something different for [student name]." Also, a similar response was given verbally to the outside tutor. The lack of communication to the tutor was unacceptable. Phone calls will be returned within 24 hours. Your responses to both of these people were not representative of district practice.[6]

---

[6] Horwitz' letters to the tutor, Cheryl Susman, and to Dr. Grieske in late April, 1995 have a different flavor. It appears that the modifications to the student's curriculum which they were urging seemed to Horwitz as if they would make the student stand out negatively. Horwitz suggested other modifications of a less intrusive nature. Specifically, she felt that writing was a strength of this student and written assignments might be modified.

2. Staff members are expected to be polite and emotionally controlled in dealing with parents and colleagues. While you stated Mrs. [D] was yelling at you over the phone, I had at least 2 staff members approach me to share their concern for the way you handled yourself on the phone. If a parent is distressed, it is your job to acknowledge that and to politely and effectively postpone the conversation until

but not eschewed. Her letters document her position and her attempts to reach the tutor by telephone. "I began to feel uncomfortable relying on [the tutor] since her advice was not only questionable, but her assumption that I did not have time for [the student concerned me. I had been very successful with [him] because I treated him with respect.... I believe that giving a boy like [him] a crutch is like telling him he isn't ..... I think there are too many people jumping every time [the student] makes a statement. I had thought that [the tutor] was a therapist and would react in a more objective manner. I do modify things for [the student] but in a more subtle way. For instance, his spiral, or notes for a major country report, was incomplete. I could tell he tried hard so I gave it back and to him to add more over the weekend [while three other students whom I felt weren't trying received falling grades]."

both parties are able to discuss the issue in a productive way.

In addition, it is unacceptable for you to come into my office and yell at me after your phone conversation. I understood you were upset, but yelling at me and giving me directives on how I must now deal with this student and parent and that you refuse to have any interaction with this parent, is not handling the situation in a productive manner.

Also, if a meeting is requested by a parent, other staff members shall not be in attendance, unless requested by the parent. This is intimidating and has the tendency to set a negative tone for the meeting. By refusing to work with this parent, your actions are not aligned with our District Mission Statement which expects a partnership between staff and parents.

3. Staff members are expected to respond to requests

made by the principal. When I ask for a time to meet with you, I expect that you respond to that request. I asked to meet with you the day after your phone discussion with Mrs. [D] and you told me that you didn't have time. Then, when I came to give you information about the conference I had with Mrs. [D] you walked away from me in your classroom. These actions are unacceptable and could be deemed insubordinate.

4. Staff members are expected to make reasonable accommodations for the success of students. [Not having time is an unacceptable response. Failure to respond to directions to supply documents on time is also unacceptable.] [I]f a child has a significant amount of missing work, allowing him the weekends to catch up, seems reasonable and makes much more sense than to expect him to do his schoolwork, in addition to late work, during the weeknights.

5. . . . [S]taff members are expected to maintain confidentiality and to discuss students in a productive, professional manner. [Reciting an incident in which these principles had allegedly been violated.]

I (as well as the pupil services team [for students with special needs]) have heard you refer to some students as being "stupid". This is inappropriate and unacceptable language. [Reciting incidents in the teachers' lounge where this principle was allegedly violated.]

6. ... The Board of Education has provided the staff with many hours [reciting them] to work on the school improvement plan. This is a mandatory plan for the staff and district and is a requirement of your job. The Board of Education has offered much more time than many other school districts and expects that the plan be completed by the deadlines set forth.

As I told you on June 8, *1995,* I'm more than willing to work with you on these issues. You need to address the aforementioned concerns which are violations of Board Policy and District practice. [Original emphasis and punctuation.]

The copies shown on the letter were for Superintendent Sloan and the teacher's personnel file. The August 1 cover memo stated that "my goal is not to focus on problems that occurred this past year, but to work together to ensure a

positive start to a new school year."

On August 8, Horwitz formally responded to the June 12 letter and the August 1 cover memo. Over the course of eight single-spaced typed pages she denied failure to work collegially with outside support people. She recited the amount of time which she had spent with tutors, psychologists and other such individuals. She declared: "If I am expected to give unlimited time to students who require excessive time, I will not be able to continue to provide the thorough and effective individualized and enriched program I now integrate into my teaching," such as the student newspaper. She stated that she had given the student what he needed and not necessarily what his tutor recommended. "Working collegially" need not mean abject submission, she asserted. With respect to Biancalana's second point, Horwitz denied that she had been either impolite or out of emotional control during the telephone conversation in question. Rather, she averred, she had been both polite and in control. She gave the names of four teachers who had been in the lounge who confirmed her version. She admitted that the call made her angry, that she was feeling unwell in Biancalana's office after the call, which Biancalana had observed while continuing the stressful conversation for 45 minutes. She apologized for having raised her voice to the Principal, while explaining that she had "implored" the latter "not to force me" to deal with the mother in question. Horwitz accused the mother of "preconceived hostility" and acting "abusively toward me." Since the mother's concerns had to do with the International Fair, a class-wide activity, Horwitz thought it appropriate to have fellow fourth grade teachers present. She declared that when the meeting turned to individual, rather than class wide, matters she had asked the other teachers to leave. Horwitz

stated that she had requested the Principal to prevent the mother from coming into the classroom "unaccompanied since she was frightening to me in my health condition." With respect to the Principal's third point, Horwitz claimed that she had repeatedly met with Biancalana for extended periods, that the Principal had picked out the one occasion when she had failed to do so and that this treated her differently from the Principal's tolerance with other teachers. She denied failure to respond to Biancalana's requests. With respect to the fourth point, Horwitz denied failure to make reasonable accommodations to student needs. She claimed that the success of her students belied that accusation. She explained the need to prioritize her time and denied failing to provide the homework assignments in question. Rather she gave an extended explanation for her actions. Horwitz noted that her annual evaluation, dated June 6, was "excellent" and that the principal had commented on Horwitz' effectiveness with her students. "...[Y]ou now have taken this opportunity to disagree with many of my professional decisions. My decisions evolve from my perceptiveness and ability to see past the superficial. My highly developed ability to make decisions is the core of my success with children." With respect to the fifth point, Horwitz denied failure to maintain confidentiality. Rather she accused the parent of intrusive conduct. She denied calling any student "stupid," but

claimed rather that she had referred to stupid comments. She declared that it was inappropriate to raise now an incident which was over a year old. She claimed that she made humorous remarks to her colleagues in the lounge, but did not make "negative, destructive comments." Again, she claimed success with her students. With respect to the sixth point, Horwitz "felt concerned that the District was about to adopt an enrichment program based on the model of my enrichment program and yet I knew that my health was being sacrificed attempting to keep up with the demands." She said that she had spent long hours on this project. In conclusion, "I did wonders with most of the students in my class last year," despite her heart condition. "I was thoroughly supportive of you and even won over parents for you and yet

you chose to reprimand me with unsubstantiated hearsay and groundless accusations." She invoked her right to a pre disciplinary conference with representation before the written reprimand was issued. She claimed that the principal reneged on a promise at the June 7 meeting that none of Biancalana's concerns would be placed in her personnel file. "[y]our lack of respect for my ability to interpret the Mission [of the District] is most distressing in light of the numerous positive contributions I have made."

In spite of these complaints, the Board granted Mrs. Horwitz a continued contract (tenure) beginning with the 1995-1996 school year.

1995-1996

Biancalana received a report from Mrs. K, a parent of one of Horwitz' students, that Horwitz was "ignoring" both the mother and child. After an October meeting to discuss it, Horwitz reported that she had talked to the mother and the matter was resolved. There were no further problems regarding that parent or child. Another problem regarding the allegation that Horwitz had described a student's prior teachers had ill prepared the child was similarly resolved. Biancalana, who had no first-hand knowledge about the matter, asked the offended teachers and the parent to talk to Horwitz. She heard nothing further about that matter. After receiving a parent's report that Mrs. Horwitz had referred to students as "misfits," Biancalana cautioned the teacher against such comments. Having received other reports that parents had not received notice of missing work until the October parent-teacher conference, Biancalana asked Horwitz to let the parents know promptly when assignments were missing. The problem was that Horwitz clipped the list of missing work to the classroom file cabinet; that informed the students, but parents who were unable to visit the classroom regularly were not informed.[7] Biancalana testified that Horwitz continued to use the magnetized clip on the file cabinet, but there is also testimony about Horwitz having

advised parents of missing work. In 1997, after student A. had gone on t[illegible]th grade, the student's parent complained to

[1] Other teacher[illegible] home "Friday folders" listing the missing work. However, no particular method of informing the parents was prescribed.

Biancalana that the student had not learned cursive writing in Horwitz' fourth grade class, a part of the fourth grade curriculum. When Biancalana raised this with Horwitz, the latter explained that her teaching assistant, who worked more closely with the students on handwriting, had frequently been absent from class. Biancalana told Horwitz that the responsibility for the curriculum lay with the teacher, not the assistant. Another report about a child with special needs who was in Horwitz' fourth grade this year was made to Biancalana "two to three years after this child was in Mrs. Horwitz' classroom." As with other children with special needs Mrs. Horwitz appears to have taken a less restrictive approach. [8] By the time this complaint surfaced, verbal communication between Horwitz and Biancalana had ceased, so they never discussed it.

Having achieved tenure, Mrs. Horwitz was to be evaluated every two years. The 1995-1996 school year was the first year of her tenure and she was not formally evaluated.

1996-1997

A presidential election was to be held in November, 1996. Laura Beaupre and Jeannie Schafer, two of the fourth grade teachers - the junior ones - proposed an enrichment project to the regular fourth grade government unit. They wanted their students to conduct an election, not just in their classrooms but school wide. Biancalana advised them to consult the other two fourth grade teachers, Horwitz and

[8] It is impossible to make any conclusive finding regarding Horwitz' treatment of this child. There is no evidence that the child had been identified as eligible for special services when he was in Horwitz' class.

Sheryl Haste. Horwitz exclaimed that she was not going to touch electoral politics in her classroom with a ten foot pole. She and Haste declined to participate in this activity, but decided to have other, more conventional, enrichment activities with respect to the government unit. Nonetheless, the school wide mock election was conducted. On November 6 the fourth grade team had a meeting. Schafer immediately complained to Biancalana that she and Beaupre had been humiliated by Horwitz' comments that not only should the junior members of the team stick with the conventional curriculum, they should "be riding on the coattails" of the senior teachers and that there are other "stars" in the building beside the younger teachers. Schafer had also related that she had suggested the presence of the Principal, to which Horwitz responded that the Principal had no place in a team meeting.

Biancalanca then asked Superintendent Sloan to follow up with an investigation, which he did. He first met with Beaupre and Schafer, who related the incident and how they felt humiliated and threatened. On November 13 Sloan met with Horwitz for an hour and forty-five minutes after school. Sloan testified that he told Horwitz that there was a team problem that had to be resolved, to which she replied that it was "the girls'" problem, referring to Beaupre and Schafer, not hers. While seemingly inconsequential in itself, this incident appears to have dramatically changed the relationship of the parties. The matter having gone outside of Avoca West to the Superintendent, Horwitz became defensive and guarded. Horwitz appears to have regarded Sloan has her prosecutor, which he did become, and Biancalana as his prosecutorial assistant.

The conflict among the members of the fourth grade team with regard to the election project spilled over into the next major class wide activity, the Spring International Fair. This was a big annual event. Much of the spring of every fourth grade year was devoted to it. The fourth graders made presentations on "their" countries for the entire school community. There were set routines and many details to be

mastered. Beaupre and Shafer, new to the experience, were sharing the anticipation and anxiousness of their students, particularly the slower learners. As early as February they began asking what they needed to know and how to prepare. Horwitz in particular told them that it was too early and that they would be filled in as spring break approached. The junior teachers complained to Biancalana that they were being deprived of information they should have.

Early in April Biancalana formally evaluated Horwitz in her regularly scheduled biennial evaluation. Horwitz was rated "excellent," the second highest rating after "superior." She was criticized in particular for having a negative effect on the fourth grade team. Horwitz' "rebuttal" argued that she was a team player, but most of the rebuttal argued the inappropriateness of having made Laura Beaupre the "mentor" of the newest member of the team rather than herself.[9] That Horwitz took this as a slight is apparent from the text of her rebuttal. That it rankled all year apparently contributed to the poor relationship that she had with the newer teachers on the team.

> The Horwitz rebuttal concluded:
> I believe that your message that we are all of equal ability sabotages the chance that [Beaupre and Shafer] will be open to the experience I have gained over years of working and life experience. In addition to my twelve years of teaching, I have managed a multi-million dollar sales operation and had the responsibility for hiring and firing many employees. I have raised three children and participated as a parent. Thus, I was able to satisfy many very demanding parents during my

[9] Beaupre had not taught fourth grade at Avoca West until this year. She had taught third grade while Schafer was new to the school and Horwitz had been teaching fourth grade since the fall of 1993.

first year of teaching at Avoca. In spite of the fact [that] I had limited knowledge of International Fair [in my first year], I demonstrated organizational skills and instilled confidence in [the parents of my students]. I have had very few parental complaints during my years at Avoca compared to other team members. In conclusion, I believe the aforesaid discussion justifies that my rating be changed from excellent to superior.[10]

10 This document also recited that in withholding information about the International Fair until the spring break she was only following the example of her mentor when she began teaching fourth grade.

11The Board has asked the Hearing Officer to take notice of the decision of Judge Lindberg granting its motion for summary judgment on November 21, 2000 and the subsequent affirmance by the Seventh Circuit Court of Appeals. Notice is taken that these events took place. However, the substance of those decisions do not bear on the issues in this matter.

For the next school year Horwitz was assigned to the fifth grade at Avoca West. When in April she first learned of the possibility of her transfer she requested that she remain teaching fourth grade. She claimed that she was being singled out and discriminated against in this assignment. She had never before taught fifth grade and in particular fifth grade science which was somewhat more advanced than she was used to. The fifth grade assignment also required more cooperation with other teachers, especially in the science curriculum. The Board contended that the assignment was made only because of the teachers available and that Horwitz was the best fit. The administrators testified that the reassignment was not for discriminatory reasons but was occasioned in part by the conflict among the fourth grade teachers the prior year and because they opined that Horwitz, as a more experienced teacher, was well qualified to teach a more advanced class. Science for fifth graders was taught not only in the home classroom, but also in the science lab. Joe Baker, an experienced teacher with expertise in science, taught the other fifth grade class, but Mrs. Horwitz was

expected to share pedagogical duties in the science lab, including sessions for two homerooms. The right of the Board to make assignments is granted under the collective bargaining agreement; Horwitz did not file a grievance alleging discrimination in this regard.

1997-1998

On May 12 Mrs. Horwitz' attorney had threatened a possible age discrimination lawsuit if the assignment to teach Fifth Grade proceeded. Between May and the fall Mrs. Horwitz, through her attorneys, filed an age discrimination against the Board with the Equal Employment Opportunity Commission (EEOC). In the fall of 1998 Mrs. Horwitz received a "right to sue" letter from the EEOC. Shortly thereafter, Mrs. Horwitz, through her attorneys, filed a complaint in United States District Court for the Northern District of Illinois, Eastern Division, in the matter of Karen Horwitz V. Board of Education of Avoca, et al. The matter was docketed as 98 C 6490 and assigned to Judge Lindberg.[11]

Problems over the science curriculum arose almost immediately. Parents complained that Mrs. Horwitz was avoiding the laboratory and giving book report and biography assignments related to science instead. A flurry of memos between the Principal and the Teacher ensued. The Principal reminded Mrs. Horwitz that the improved science curriculum had been approved by the Science Committee on which Baker served and that laboratory time was vital to the implementation of that curriculum. Mrs. Horwitz responded that she believed that book reports and biographies were important methods of teaching science. Biancalana replied that she was not prohibiting book reports and biographies. Horwitz claimed that she was being given inconsistent directives. She stated that she was up on the latest "Brain Based Research" and that Baker might not be. She also claimed that all of this was a pattern of harassment because of her pending EEOC matter.

During this school year Dr. A., a parent of one of Mrs. Horwitz' more gifted students, suggested science enrichment for her daughter. Mrs. Horwitz' response was to suggest that she start a Science Club. However, she wanted only children that she thought were bright to be included. When the Principal told her that all clubs had to be open to all students who wanted to participate, Mrs. Horwitz dropped notion of sponsoring a Science Club.

Among the students assigned to Mrs. Horwitz' classroom was Ben B., a student with a disability warranting an IEP. The student's IEP was due for reevaluation in or about November. Beginning the prior spring Mrs. Horwitz was evaluating how best to approach this student's special needs. In consultation with Anita Friede, Ben's case manager, she determined not to modify his grades, as she believed had been done in the prior year. Friede agreed. Horwitz also thought that having a special education teacher with Ben in the regular classroom might be detrimental to his self-esteem, that she could deal with his classroom needs and that her approach was consistent with the requirement to educate him in the "least restrictive environment" appropriate to his needs. The parents agreed and the IEP was modified in accordance with the Teacher's recommendations.

On December 5 several witnesses reported to Biancalana that Horwitz had yelled at a teacher's assistant in the copy room in the presence of children. Biancalana documented the reports in a memo to Horwitz and received subsequent confirmation from another witness.

On December 9 Superintendent Sloan notified Mrs. Horwitz that he had directed Principal Biancalana to have a third party present during all conferences between the two of them because of a "consistent lack of congruence between what had transpired and Mrs. Horwitz' later accounts. The third party was to take notes and "attest to the veracity of records documenting the meetings."

On December 17 Mrs. Horwitz responded. She

challenged his questioning her credibility. She asserted that Sloan had no way of determining which of the

participants was telling the truth.

> You owe a duty to me before such a statement is made to investigate the situation. Your failure to do so indicates a lack of reasonable grounds for your belief that I am being untruthful. I am sure that you are aware that publication of false statements about me to a third party may result in your being personally responsible to me for defamation of my character. Falsely accusing me of being untruthful and letting others know about these falsehoods diminishes my reputation, esteem and respect at Avoca. A third party who is not equipped with court reporting equipment cannot assure accurate documentation of the exact words and intonations. Therefore, I will need to bring a tape recorder to any future interfaces with Principal Biancalana to assure there are no further violations of my rights or untrue and unsubstantiated allegations made against me. ...
>
> It is most unfortunate that you choose to escalate the unresolved conflict by accepting Principal Biancalana's perceptions of our interfaces without investigating as to their truthfulness. Your unwillingness to utilize a conflict resolution approach because of your preferred policy of "making a staff member's life miserable" when they escalate an issue, a policy which you stated to me during our conversation in November of 1996, has resulted in a substantial loss to the children of Avoca. I have dedicated myself to following Principal's Biancalana's directives which have continued to contain contradictions that need clarification. These contradictions are clearly documented in our memo interfaces and exhibit a consistent lack of congruence from one memo to the next. These documents alone substantiate that Principal Biancalana is focusing on following your orders of harassing me rather than on providing me with clear and educationally sound direction which would lead to my success and thus a

better environment for the children. Furthermore, her policy of calling in staff members attempting to secure evidence with which to discredit me has resulted in much unproductive time and effort which could have been directed toward the benefit of the children of Avoca. More than four staff members and several parents have indicated to me that they were being questioned almost to the point of interrogation about my behavior and experienced distress having been put in that position. Principal Biancalana's manipulation of people to serve the personal agenda of this administration has become quite transparent to many m this community. These tactics are unprofessional and are directly related to your personal choice of "making lives miserable."

On December 18 Sloan responded. First, he agreed with Mrs. Horwitz that he was questioning her veracity with respect to her dealings with the Principal. As an example of her misreporting events he disputed that he had threatened to make the life of Mrs. Horwitz "miserable" in the November, 1996 conference.

He named 14 individuals who had complained of her disruptive conduct, including six of her colleagues. He accused her of having reduced colleagues to tears and having yelled at a teacher assistant. He raised the issue of her having

referred to a student as "stupid." He concluded:

> It is inappropriate for you to threaten your administrators with defamation law suits. You seem to fail to understand the supervisory relationship that exists between you and your principal and superintendent. When you act unprofessionally, as has been repeatedly documented, it is the duty of your administrators to inform you of your inappropriate behavior. It is also the duty of your administrators to investigate and document these incidents with the individuals involved. Note that you are the first to demand who is making allegations when reports of

your unprofessional behavior are forthcoming.

On January 19 Mrs. Horwitz met with the full Board in executive session at her request. The Horwitz presentation consisted of a six-page single-spaced statement, followed by 36 exhibits, documents each of which was introduced by a "summary." (Bd. Exh. 281) Among her assertions were that she was an acknowledged excellent teacher, that she didn't have to work for a living, that her husband's income permitted her to pursue this pseudo-profession, that the whole atmosphere at Avoca West had changed since Carol Rak was replaced by Biancalana, a mere 29-year-old at the time of her hire, on a fast track. She expressed concern with drug abuse which she attributed in part to student apathy. "Outrageous interchanges have been going on for the past three years which culminated in the administration moving me to fifth grade as a punishment ...." She urged investigation of the "abuse" she was suffering at the hands of the administration. "...[W]e have a system of quislings who reap their rewards for providing information about their fellow colleagues rather than for their efforts with their students of their competency. Teachers are encouraged to 'tattle' on each other to earn brownie points from our leader so that she can write up those people she dislikes; incompetent behavior is covered up as a reward for playing her game." She asserted that Larry Neumann, a former teacher, left because of "the outrageous abuse he received from this administration ... ." "If there is anything truly wrong with me, it's that I am too advanced for the current leadership ... and I threaten them." "I will be happy to teach you about what I learned [about a new teaching style] and what makes me an excellent teacher if you care to know. It would help you understand why this administration is so detrimental to academic excellence."

On January 30 Horwitz wrote to Biancalana about computer lab usage. (Bd. Exh. 57) She wrote that her need for the computers for her class was most pressing, that the fifth grade schedule was confining and that she needed to be able to reserve computer lab time before the sign-up sheet was circulated. She concluded: "If parents call to complain,

be advised as to how my decision was made and that I did the best I could do within the circumstances of this system for lab usage." Biancalana did not received this memo until February 3, (Bd. Exh. 58) when she responded in part: "Based upon your additional threat to communicate misinformation to parents about computer lab usage, send all

further parent communications to my office for review. Do not distribute same until I have approved for distribution."

On February 16, the Board met in special session to adopt a formal response to the Horwitz presentation of January 19. A member of the Board read a statement on behalf of the Board to Mr. and Mrs. Horwitz. It declared the present situation was intolerable, that it was not making judgments and encouraged both sides to submit to a conflict resolution process with a neutral facilitator. The statement declared that the Board "cannot and will not" get into an investigation as Horwitz had urged. "If the [conflict resolution] process fails, the Board will then find it necessary to revisit the situation and take further action." The Board asked for an answer from Horwitz, which was not immediately forthcoming. Mr. Horwitz asked if the Board would be open to a counterproposal. Dorothy Ballantyne, the Board President, said that the Board had carefully considered what was best, but that it would be open to listen to a counterproposal if it was transmitted promptly.

On March 9 Ballantyne wrote to Horwitz, stating that since the Board had no response on the matter of conflict resolution, the Board was ordering that the process proceed as originally stated. Specifics would be forthcoming.

Also on March 9 Mrs. Horwitz wrote to the Board in her most inflammatory style. (Bd. Exh. 71) It was ostensibly in response to the direction to mediate her dispute. "I am very agreeable to using a good faith effort to reestablish a good working relationship; however, I *cannot agree to do so* without the proper investigation done by you or by an outside

party and I am deeply offended by your disregard for my dignity, considering that I have dedicated myself to the children of Avoca for over five years."(emphasis supplied.) This memo is peppered with allegations that she had been "psychologically raped," that Sloan and Biancalana had made "false allegations" against her, that they had committed "atrocities" and the like. She alleged age discrimination by Biancalana, specifically failure to hire another teacher over the age of forty on a tenure track until after Mrs. Horwitz' EEOC charge and alleged the dismissal of several "older" teachers.

> I spent three years, living in torment, knowing that Jack [Sloan] operates like a bully and intimidates people into submission, afraid he would come back into my room and speak to me in the way he did in October of 1995 when he didn't agree with something I had said that he considered 'not political'. He had a frightening look in his eyes and his tone of voice and demeanor left me like a deer in the headlight. Many had warned me of his wrath and every time I received an envelope with my name on it, my heart pounded, thinking it was a directive that I had to meet with him. Then when I finally received that dreaded directive, I was so distressed that I had my husband call him because I feared for my health, at which time he and my husband carried on a twenty minute shouting match.

My health has deteriorated since I came to work for the district, and although I cannot attribute my total heart problem to this situation, I am convinced that the out of control adrenalin that occurred when I feared these people and what could do or say to me contributed to substantially to my heart condition. It was not until I hired a lawyer and took the offensive that I [gained] any sense of protection against these outrageous administrators. You are probably thinking that if this is true, why didn't I just quit since my health is worth more than anything. The reason I didn't quit is because I also know that your administrators spread rumors about past and current employees and continue defaming people and I

am determined to vindicate my name for revealing them for what they are so that no one will believe them if they attempt to spread more false rumors about me. I live in this community and I must protect my name. Therefore, I cannot and will not enter into mediation without the truth revealed. During the summer of 1995, my husband and I met with Jack Sloan and he agreed that he would speak with Venette [Biancalanca] about her constant harassing and for about one year things were peaceful. However, I lived in fear that she would start again, knowing her true nature. Sure enough, she started again with a vengeance in the fall of 1996.
Horwitz stated that she had got in the way of Biancalana's plans to show off Beaupre and Shaffer. "I am sure that is why she came after me so vindictively...."

Thereafter, Mr. Horwitz inquired whether the Board would be willing to consider other formats for mediation, to which President Ballantyne replied in the affirmative. No format was agreed upon and no mediation was conducted until directed by the Board later that summer.

On April 1 Mrs. Horwitz sent a memo to the Board (Bd. Exh. 162) in which, *inter alia,* she stated that she felt compelled to tape record future pupil service sessions unless a named Board member "or another Board Member with my agreement" is present. This was necessitated, she declared, by a memorandum authored by Biancalana, Special Services Director George Tuttle and Anita Friede. According to Horwitz that memo, which related to the special education student Ben B., misrepresented the facts. Involving Tuttle and Friede in what had previously been a dispute solely with other administrators, "substantiates that I was correct to be concerned about the sincerity of Venette's stated intention to take part in conflict resolution." She compared her goal of benefiting [sic] the children with Biancalana's inferred goal of harassing Horwitz. "The fact that she operated in 'gang' style, knowing that administrators have power over staff, is outrageous." She dragged Local Union President Tracy Gordon into the "disingenuous" group. Thus, going through that channel would prove to be unsuccessful. Horwitz had

been "humiliated and degraded" by Gordon's memo the previous October, she claimed.
Since you [the Board] do not believe that your job is to investigate, you are giving

the administration the right to be judge, jury and executioner which is not the American way. I cannot imagine how you people sleep at night knowing what they are doing to me especially after sixty people petitioned you to make sure you listened to me, not to mention the outstanding job I have done teaching in this district. I also cannot imagine why you are willing to spend taxpayers' funds to defend retaliation charges which I will need to file if this does not stop. You must do the job you promised your constituents and for which you were elected.

On April 8 a special education team was convened with the parents of Ben to review *his* progress under the IEP developed in November. According to Horwitz, Tuttle and Biancalana raised the fact that Ben's grades were not as good as in the previous year. Horwitz took this to be criticism of her plan, which had expressly involved giving him only the grades which he earned, a change from the prior year. Despite these remarks, the parents agreed that the Horwitz program should be continued. With the full knowledge and acquiescence of the participants Horwitz made an audio tape recording of at least part of this meeting. Thereafter, Anita Friede and others sought all of the copies of the recording on the grounds that it was a student record as defined by the Illinois School Code. Horwitz resisted on the grounds that what she said at the meeting was her only defense to possible wrongful accusations concerning her remarks.

Later, Horwitz played the audio tape for two of the Board members in order to prove that she was being harassed. The Board members were not members of the special education team for the student. This alleged breach of the confidentiality of student records caused the administration to press Horwitz not only for a copy, but for

the original and all copies of the tape recording.

Having "absented herself"[12] from the school for medical reasons, Mrs. Horwitz was seen by her own doctors on April 9 and 14. One of her doctors generated a "To Whom It May Concern" letter on April 14, giving his recommendation that "she be given two weeks of sick leave to remove her from an extremely hostile working environment which may have a negative impact on her medical condition."

> On April 16 Mr. Horwitz sent a letter to Principal Biancalana by facsimile. It stated:
> Please be advised that Karen Horwitz is ill and she is uncertain about when she will be able to return to work. She had been experiencing various symptoms which caused her to see her nephrologist/internist on April 9, 1998, and then to see her cardiologist on April 14, 1998. Several tests have been run and she is currently awaiting the results of these tests.
> After discussions with Karen, her nephrologist/internist stated that she remove

[12] She was absent. The Board's use of the term "absented herself' implied a voluntary, rather than an emergency absence.

herself from her extremely hostile working environment which may have a negative impact on her medical condition. Her cardiologist stated that a hostile stressful working environment is deleterious and it could exacerbate her heart condition.[13] Both of her physicians have, therefore, recommended that she immediately remove herself from her hostile working environment.

> Karen will not return to work until the results of her tests have been received, she becomes symptom free, and she begins to feel better. She will let you know

[13] This condition apparently had not been raised since it was purportedly resolved in 1995.

when she is ready to return to work. Until this occurs, she is to have no contact with any members of the AVOCA School District Staff. She has advised me that, during her absence to recuperate, lesson plans will have to be completed for her class. She has completed lesson plans up to and including Friday, April 17, 1998.[14] Math is planned somewhat beyond that date. Specific instructions which have been prepared by Karen are attached to this letter. Any correspondence that needs immediate attention must be handled by someone else during Karen's absence. Please mail Karen's paycheck to her home. Karen wishes me to thank you for your understanding in this matter. (Bd. Exh. 59)

Attached to the correspondence was a brief sheet covering the basics for a substitute teacher for her class.

On April 24 Mr. Horwitz, on his legal facsimile cover sheet, faxed the doctor's opinion of April 14 to Dr. Sloan. In his cover sheet, Mr. Horwitz wrote:

> Karen has received her test results back and they are favorable. She seems to be symptom free, and she is feeling better. Enclosed is a copy of a letter [described) which indicates that she should take two weeks off from her job. It has been two weeks since she last worked. She feels well enough to return to work. Please advise as to what provision of the Union Contract or other authority upon which you are basing your requirement that she undergo a medical fitness for duty examination by a physician designated by the District"? Awaiting your advices.

Dr. Sloan replied in a facsimile to Mrs. Horwitz in

---

[14] The substitutes complained that the lesson plans were woefully inadequate and the Principal
concurred in a memo to Horwitz dated April 16

care of her husband on the same day. He specifically directed that Mrs. Horwitz not return to work on Monday, April 27 as planned. He cited her physician's advice that a "hostile working environment" might exacerbate her heart condition. Dr. Sloan wrote that the District was concerned about puffing her at risk. Upon advice of counsel he further required her to undergo a medical fitness for duty examination by a physician designated by the District before any return to work and to consent to the release to the District-appointed physician of her medical records. This fitness for duty examination was later expanded to include a psychological as well as physical examination.

On April 28 there were demonstrations, which to the Board seemed

organized, including the students in her classroom and questioning how soon Mrs. Horwitz would return. Some students and parents accused the Board of keeping her away by directing the medical examinations. That day Dr. Biancalana sent a letter home with Mrs. Horwitz' students stating that the Teacher had been out of class for two weeks on sick leave, that she was requested to meet with a District-appointed physician to assure her medical ability to resume her duties. The Principal also noted that she and the social worker had met with the children in that class in order to reassure them that Mrs. Horwitz would be able to return when she was medically fit.[15]

On April 29 Dr. Mendelson, Mrs. Horwitz' cardiologist, prepared a "to whom it may concern" letter stating the results of her April 14 examination with results within acceptable limits. The doctor also reported that the teacher was "completely asymptomatic" on April 29. However, the doctor wrote that the disclosure of any further medical information would require a specific release.

The First Notice of Remedial Warning

[15] The Board President sent a similar letter home on May 8.

On April 20 the Board adopted a Notice of Remedial Warning.[16] It notified Horwitz that her conduct as a teacher was "deficient and unsatisfactory" in the respects enumerated, that the administrative staff had attempted to assist her to remedy this conduct, that the administration considered that she had been "unwilling or unable to take corrective action," and that a repetition of the behavior could lead to formal charges for dismissal. The first item dealt with alleged repeated refusal to follow directives and specifically the directive to participate in mediation. Horwitz was directed "to follow the directives of the building principal, Superintendent, and Board of Education, and to refrain from conduct which demonstrates an unwillingness to follow such directives. You are further directed, again, to participate in a mediation process designed to address the conflict between you, the building principal, and the Superintendent." Second, "[w]hile the Board of Education recognizes your right to speak out on matters of public concern when done so for reasons other than to advance your own private concerns and grievances, you have repeatedly made statements, and included statements in documents you have written, which contain false allegations concerning the conduct and actions of the building principal, Superintendent, and other school district personnel." It identified the following instances: 1. accusing Sloan of threatening "to make life miserable" for her and other threats against her, 2. accusing Sloan and Biancalana of "evil deeds," "atrocities," of being dishonorable and having spread false rumors, of "defaming people" and of being immoral, 3. threatening to "disturb the fabric of the school
community" unless the Board investigated the administration

[16] It first heard from teachers Tracy Gordon, Anita Friede, Laura Beaupre and Patti Flocca, two of whom. Gordon and Flocca, had served as President of the Avoca Education Association (the teachers' union). Each of the teachers had a complaint about interactions with Horwitz.

as she had demanded.[17] The latter comment was deemed a threat to escalate her conduct, thus interfering with the operations of the District. "You are hereby directed to cease making false allegations concerning the conduct and actions of the building principal, Superintendent, and other school personnel, and to cease falsely characterizing administrators as evil, vindictive, malicious, immoral, or having similar characteristics. You are further directed to cease engaging in other conduct which unduly interferes with the operations of the school district. Third, "You have been unprofessional in your interactions and dealings with the building principal concerning classroom curriculum, and other matters involving her supervision of your teaching .... You respond to simple directives with lengthy memoranda which address irrelevant topics, which mischaracterize the nature and purpose of such directives, and which demonstrate a general unwillingness to follow the directives of the building principal. Your communications with the building principal are unnecessarily argumentative and obstructionist. You are hereby directed to deal professionally with the building principal ... and to follow the building principal's directives."[18] The fourth item dealt with failure to work cooperatively with fellow faculty and support staff, both in and outside of the building. It also accused Horwitz of failing to acknowledge responsibility.[19] It referred to the fourth

---

[17] The quoted statements appeared in the March 9, 1998 memorandum to the Board. Horwitz in fact believed that Sloan had threatened to make life miserable for her; he testified that the word ~miserable" was taken out of context. The ~atrocities" remark in context was obviously hyperbole for emphasis. Horwitz felt that she had been defamed and the "disturb the fabric of the school community" quotation was accurate. It may well have been further hyperbole.

[18] There was abundant support for this assessment and directive. By this time Horwitz and Biancalana were rarely talking. virtually all of their communication was in writing. The Horwitz memoranda usually contained three to four pages apiece. They were unnecessarily argumentative. Horwitz felt herself victimized and discriminated against. She was unwilling to have her words misunderstood or misquoted; she was protecting herself against this perceived discrimination. Similarly, Biancalana wanted to make her positions, directives and other communications unmistakable.

[19] This was one of the outstanding characteristics of the Horwitz opus. On

grade conflict and the fifth grade conflicts. It accused Horwitz of "belittling the knowledge and abilities of other team members" and being rude to them.[20] "Despite previous warnings, you have continued to engage in conduct which demonstrates a failure to work cooperatively...." She was directed to cease such conduct, to cease casting aspersions on the professional abilities of others and "when you have legitimate concerns regarding the conduct and actions of your co-workers, that these concerns be addressed in an appropriate and professional manner.

On May 14 Horwitz was examined by a physician approved by the Board. On May 15 Horwitz resumed her duties.

On May 19 President Ballantyne directed all parties to appear for a mediation session on May 22 with a designated neutral and to make a good faith effort to resolve issues. This was done, but without success.

On June 19 Superintendent Sloan directed Horwitz immediately to turn over the original and all copies of the tape recording made on April 8. Horwitz did not comply.

Second Notice of Remedial Warning

On July 10 Sloan issued a notice of recommended remedial action based on failure to turn over the April 8 tape and all copies and her failure to consent to a psychiatric examination. This letter was received by Horwitz on July ii. On July 15 her attorney wrote to the Board concerning the action recommended for that evening's session. He stated that Horwitz would turn over a copy of the tape but not the

---

occasion she would declare her intent to work cooperatively or would attempt to explain away her behavior, but those comments were often accompanied by the laying of blame on others.

[20] The remarks which were taken as belittling were rarely intended that way, nor did she view her actions as rude. There was always some explanation.

original and that she would consent to a further psychiatric examination under protest. He suggested that the Board adopt protective restrictions on such an examination, including that the results be used only for determining fitness for duty and/or if accommodations were called for under the Americans with Disabilities Act. As to the tape recording, Mrs. Horwitz' attorney noted there was nothing unlawful in making the recording with the full knowledge of all of the participants. He further noted that the Student Records Act is for the benefit of parents, so that they may examine those records and not for the benefit of the District. Here the parents would have access to the copy at the school and at the same time Mrs. Horwitz would be able to preserve evidence necessary to the prosecution of her age discrimination suit. Moreover, the parents had agreed to this arrangement and Mrs. Horwitz would consent to any restrictions necessary to preserve student confidentiality in the event of court use of the tape. As to the psychiatric examination,[21] the attorney noted that the only lawful uses would be to determine fitness for duty or if accommodations were required under the ADA. Mrs. Horwitz did not claim to need any accommodations, did not claim any present disability and there was no basis for believing that she had such a disability. Any further examination could only be retaliatory.

On July 15 in executive session the Board heard from Mrs. Horwitz' attorney with respect to the lawfulness of the directives to turn over the tape recording and to undergo a psychological examination. Mr. and Mrs. Horwitz and the Union'[sic] UniServ Director were also present. Immediately thereafter the Board adopted its Second Notice of Remedial Warning. It noted continuing unprofessional, insubordinate and unsatisfactory conduct. It dealt specifically

---

[21] At this time Dr. Fink had not yet issued a written report. In that report he called for testing, not a further examination, a distinction that the parties did not foresee in July.

with two issues: the tape recording made April 8 and the refusal to submit to a psychological examination. With respect to the tape recording, the Board asserted that it was a "school student record" which must be maintained by the District as part of the student's records. The Board directed Horwitz to "return the original tape recording and any copies of the April 8, 1998, meeting on or before July 24." It warned that failure to comply would be considered insubordinate and possible grounds for dismissal. With respect to the psychological examination, the Board recited that on April 30 Sloan had directed a complete medical examination, including a psychological assessment, in response to Horwitz continued assertions that her health was affected by her working conditions. It recited that she had undergone a medical examination on May 14, but had refused to undergo a psychological examination and noted the letter of Horwitz' then attorney of May 7 to that effect. The Notice noted Horwitz' return to work on May 15, but stated that Sloan had directed a psychological examination to be conducted no later than July 1. It noted a further directive to the same effect dated June 29 despite the objections of the teacher's attorney. "Based upon your repeated noncompliance with prior requests by the District, the Board of Education directs you to arrange and undergo a psychological examination on or prior to July 4".... by Dr. Peter Fink.

Psychological Evaluation

Pursuant to the Board's Second Notice of Remedial Warning, Mrs. Horwitz was seen on July 24 for about 2.5 hours by Dr. Peter M. Fink, a forensic psychiatrist. In addition to his interview, Dr. Fink reviewed writings supplied by the District, including the March 9 Horwitz memorandum. Dr. Fink's written report was delayed until October 27.[22] The report was 20 pages long. Dr. Fink's conclusions were that

Horwitz did not suffer from a major mental illness, but that she might well have a personality disorder. He identified histrionic and narcissistic personality traits with paranoid ideas. The latter he identified as being less than delusional but feelings that she was being persecuted, harassed or unfairly treated. He discussed Horwitz' feelings that her medical and emotional states were interrelated, but neither he nor she was able to determine which one caused the other. "Horwitz portrays herself as a champion of students' welfare and a leader against the alleged fight over age

[22]Dr. Fink's testimony was that he had assumed that there would have been psychological testing upon which he could ascertain more precisely the state of Ms. Horwitz' emotional condition. He therefore withheld drafting his report until the Board asked for it without the additional information.

discrimination at her school."[23] He mentioned the controversy revolving around Horwitz and her belief that she was innocent while the administrators were the cause. He was unable to identify any mental impairment which affected her relations with students. "Based upon her current mental state, Ms. Horwitz is mentally fit to return to work as a fifth grade teacher. However, her situation could again deteriorate given her perception of ongoing efforts to harass and harm her. Should she suffer a symptom relapse, then re-evaluation

---

with both a psychiatric evaluation and psychological testing is indicated." Dr. Fink's first recommendation was for Horwitz to undergo psychological testing in order to distinguish between personality traits and the presence of a disorder. "Because of her personality traits, some ongoing monitoring of her classroom interactions with students would help to determine if her personality traits generate conflict with her students." He also recommended ongoing contact with her health professionals to monitor her physical condition and to get some idea of the interaction between her emotional and her physical condition. (Bd. Exh. 68)

Horwitz Response to Notice of Remedial Warning

Mrs. Horwitz did not respond to the Board's Notices of Remedial Warning until September 24, after the new school year had begun. As to the first Notice she disputed its "factual accuracy and completeness and [its] legal sufficiency." In particular, she noted the lack of specificity making it "impossible" to address the first charge except to deny it. She attacked the mediation directive as an extra-legal effort to deny her the opportunity to pursue her age claim in the courts. She noted that, despite that, she had in fact participated in the mediation and that, for that reason, she had fully remediated the allegation of refusal to follow directives. She asserted that she had a constitutional right to make oral and written statements and that any direction not to make them would infringe upon that right. She denied that those statements were made in order to advance her own ends. She asserted that age discrimination was a matter of public concern and, therefore, that speech about it was legally protected. She also declared that her personal motives did not affect the protected nature of her statements. She challenged the Board's crediting the Superintendent's statements over hers, especially as to his denial that he had threatened to make miserable the life of any staff member who "escalated" an

[23] In his testimony Dr. Fink noted the lack of specificity in Horwitz:' claims to be a superior teacher. He noted that on one hand Horwitz referred to Biancalanca by her first name and wanted to entertain her and the other staff at the Horwitz home while at the same time she was claiming that Biancalanca was "vindictive" and harassing. Dr. Fink summed up Horwitz' description: "First of all, she is a super teacher and secondarily she is sick, both physically and [because of] the stress created by [the administrators], none of which ... she is responsible for." of the documents which he had reviewed it appeared that Bianc4ana's directives were clear and simple, to which Horwitz had responded that all of that was irrelevant; what was relevant was the alleged mistreatment. "I can be on both sides of the street. Ms. Inside and Ms. Outside and (I] have no accountability for [either role]; if you hold me accountable, then you are harassing me."

issue. She continued to assert the veracity of that claim. "I strongly believe that the principal and Superintendent have acted illegally, discriminatorily and in a vindictive and retaliatory manner. If, in characterizing their conduct toward me and other older teachers, I have used intemperate language, I am sorry for that and will do my best to see that it does not happen in the future." She contended that her assignment to teach fifth grade "and the requirement that I teach two sessions of fifth grade science, disregarding my background and experience, were acts of discrimination because of my age." She asserted that the assignment was made in the hope that she would fail and justify an unsatisfactory evaluation. She declared that the only "lengthy memoranda" that she had written were in connection with her assignment to teach science and her interactions with Joe Baker. Those, she wrote, were entirely justified and not the basis for remedial action. "However, notwithstanding what I believe to be the unlawfulness of the Board's directive in this respect, I have endeavored and I will continue to endeavor to comply with that directive. I have now involved my personal attorney in protecting me in all aspects of my employment relationship and will pursue the defense of my rights in the appropriate forum. I therefore no longer feel it necessary to defend myself by issuing written memoranda in response to each instance of conduct which I regard as improper or unlawful. I do not believe that, since April 20, 1998 [i.e., over the summer months when school was out] I have written any memorandum which can be fairly said to be violative of the Board's directive." She denied that the allegations of failed interactions with other staff for which she had been warned in her 1996-97 evaluation were valid. She also claimed that relying on that evaluation was legally insufficient. Finally, she denied the legal sufficiency of the Notice of Remedial Warning in that it was unlimited in time, containing no goals and timetables for achieving them. (Resp. Exh. 53)

Horwitz responded to the Second Notice of Remedial Warning in a separate document with the same date. (Resp. Exh. 175) Essentially, she restated her attorney's position on

the audio tape. As to the psychiatric examination, she noted that she had been examined by Dr. Fink, which effectively remediated any alleged deficiency in her prior failure to be examined.[24]

1998-1999

Among the students assigned to Mrs. Horwitz' fifth grade class was Sanae E, a bright and gifted child. However, her mother, Mrs. E, was generally regarded as a "high maintenance" parent. Mrs. Horwitz expressed concern early in the year that she might be overburdened with Mrs. E's concerns. The assignment of Sanae to Mrs. Horwitz' class, rather than Baker's, was made despite the parent's request for Baker. The administrators asserted that the assignment was not made in order to harass Horwitz, but in order to distribute the work load more or less evenly between the fifth grade teachers.

[24] This document contained 14 pages and a mass of factual detail, much of which appears herein.

Some of those concerns arose early in the year. Mrs. E wanted Sanae to have an extra set of textbooks, so that she could keep one set at school and the other at home. Mrs. Horwitz' initial response was negative, but after discussing the matter with Biancalana, Horwitz notified Biancalana on October 8 that she was willing to allow the child an extra set of books in order to show concern for the child's asserted anxiety.

On October 23 and again on October 26 Biancalana criticized Horwitz. (Bd. Exh. 140, 145) The first of these dealt with Horwitz' absence much of the day October 9 which was devoted to an inservice meeting for teachers and parent/teacher conferences in the evening. The second dealt with Mrs. Horwitz having failed to respond to intercom pages in her classroom. Horwitz responded to these criticisms in separate documents sent to the Superintendent on November

3. (Bd. Exh. 206) Before dealing with the facts of October 9, the teacher wrote:

> Before I reference the specific charges contained in the above document, I want to go on record stating that I find it shocking that this document, with its intent to upset and harass me, was placed in my mailbox at the start of the school day on October 28, 1998, 50 that it could affect my state of mind and interfere with my ability to perform as a teacher. Secondly, I find it disgraceful that this administration would attempt to increase my workload with disingenuous petty issues so that I have less time to assist my students and perform my duty to my class. Thirdly, this displays a blatant disrespect for our judicial system given that the issues evolving from my relationship with this administration are about to be determined by a federal court. Even if this administration perceives these attached issues to be of true concern, having taken this action which can and will hurt my students within the context of our pending trial, is an outrage and an indication that this administration has no respect for our legal system. ... As a teacher who advocates for the lives of nineteen students, I am overwhelmed with despair that a body, which holds the public trust, would jeopardize my students' welfare. I am further dismayed that these, and all prior false charges placed against me, had nothing whatsoever to do with my performance as a teacher, which is the essence of my duties as an employee at Avoca School District. ...

She then dealt with the facts of October 9, asserting that she had told the secretaries that she had to leave the morning meeting in order to get a call from her doctor. She then spent time preparing lesson plans in anticipation of sick leave. Horwitz recounted her medical condition, including dizziness and sleeplessness, following her discontinuation of medication. Horwitz continued to explain that she had again notified the secretaries that she was going to the doctor at 1 p.m. Horwitz wrote in some detail about the conversation that she had with the Principal at that time, disputing the latter's version. She reasserted age discrimination on the part of the

Principal, particularly her friendly relationship with younger members of the staff and keeping the older

members "out of the loop."

> Given that Venette has repeatedly discriminated against me and made false statements that are pending issues to be resolved in federal court, I have no choice but to minimize the contact I have with her. In March of 1998, while appearing before the entire Board, I pleaded with the Board to allow me to answer to someone other than Venette since she had been so abusive and they refused my request due to the fact that it had never been done. You refused to investigate to see whether my charges were true and they left me with no recourse but to file a law suit which I had tried desperately to avoid for over a year. This pattern of abuse from Venette Biancalana has not only continued, but it has escalated this year. Although it is clear that this Board has no concerns for my rights and my only venue for relief is the court, I again beg you to ask your Administration to stop harassing me and causing more loss to the students.[25] The current escalating level of harassment is not just detrimental to me or proof that Dr. Sloan's threat to make my life miserable really did occur, it is terribly detrimental to my students and I beg you to intervene for the welfare of these children.

With respect to the second discipline, Horwitz reiterated verbatim the introductory comments quoted above. She stated that she was on the phone when she heard the page and, since it was after her duty time, she concluded that it could wait, especially since she was about to leave for a doctor's appointment. When she saw the Principal the latter did not give her a note indicating the urgency of the matter.

---

[25] Although this memo was sent to Sloan, Horwitz evidently assumed that it would be passed on to the Board. Sloan acted not only as Superintendent but also as the Board's Secretary.

She explained her tardiness from the meetings the Principal had mentioned and then apologized. However, she expressed the hope that meetings could be scheduled at "a more realistic time."

On October 29 Mrs. E sent a letter to Principal Biancalana regarding Mrs. Horwitz' alleged mistreatment of Sanae. She asserted, among other things, that Mrs. Horwitz had avoided communication with Mrs. E by refusing to meet on a number of grounds, that the teacher had yelled at the student, that she was discouraging the mother from being in the school at all and other matters. This letter requested immediate transfer of the child into the other fifth grade classroom.

Horwitz continued to complain that Sanae's mother would not agree to meetings when she could devote adequate time, that the mother came in late to a general parental meeting, which, *interalia,* discussed report cards, and left early, prompting a separate meeting to communicate the same information a second time, and that the mother was generally being a pain in the neck. Although she felt that the child was a generally happy student, at the mother's request Horwitz formed an "Anxiety Plan" for dealing with Sanae's alleged fears. Around November 1 Mrs. E started becoming anxious herself about Sanae's report card. By November ii Horwitz was at her wit's end with this parent.

That day she prepared a three-page letter to Mrs. E, notifying her that Horwitz was requesting a "problem solving meeting with you and your husband so that we can establish appropriate boundaries for communicating information." Horwitz continued that she would eliminate telephone conversations with Mrs. E until a suitable plan had been adopted by the administration. She wrote that the administrators were telling her one thing and Mrs. E was getting a different message. Until after the problem solving meeting "there is no need to discuss Sanae's report card, given that I have shared all that I could share if we were to have a meeting prior to preparing and sending the report

card." Horwitz enclosed this draft in a note to Biancalana stating: "Please be advised that I will only meet with the E's in accordance with the terms stated in the letter to her." (Bd. Exh. 106) Later that day she notified Biancalana that she was not available to meet with Mrs. E any time that week. She also requested having a union representative present at all future meetings. On November 13 Biancalana directed Horwitz to drop all other plans and attend a non-disciplinary meeting in the Principal's office on Monday, November i6. Biancalana wrote that the only purpose of the meeting was to answer questions and "to coordinate a meeting with [the E's]."

On November 5 Biancalana sent a memo to Horwitz concerning a visit to the teacher's classroom that the Principal had made on October 28. Biancalana recited her observation that Horwitz had responded to a friendly "hello" with "why are you peering over my students' shoulders?" According to Biancalana, Horwitz continued in a "loud and disrespectful tone" "you said it was inappropriate to peer over students' shoulders,[26] so why are you peering over my students' shoulders?" Biancalana perceived that the children were appearing uncomfortable and left the room. Biancalana concluded:

> You are hereby notified the aforementioned behavior is in violation of the directive to remediate sent to you by the Board of Education on April 22, 1998. In that notice to remediate, you were directed to deal professionally with the building principal in matters involving classroom management, curriculum, and other matters related to your duties as a teacher and employee of District 37. Raising your voice, questioning the principal's routine visitation of your classroom, and making comments about peering over

[26] A reference, taken out of context, to an earlier criticism by Biancalana.

students' shoulders is unprofessional and insubordinate conduct on your part. The magnitude of this conduct is amplified by the fact that it took place in front of your students, creating obvious student discomfort.

In the future, if you have personal reactions to my classroom visits, you are directed to raise them with me, privately. It is inappropriate for you to challenge my authority in front of students.

I am placing a record of this event in your personnel file. As you are aware, you have the opportunity to respond on a timely basis, and, if so, your comments will be placed in your file. (Bd. Exh. 146)

On November 18 there was a meeting between the Principal, the Superintendent and Horwitz with a union representative present. After that meeting Horwitz agreed to meet under protest on November 23 with Mrs. E about Sanae's report card. Horwitz' stated position was that there needed to be the "problem solving meeting" first, but that she was not going to break a scheduled appointment.

Dr. Fink's written report was transmitted to the Board on November 6 by Dr. Sloan. On November 17 he directed Horwitz to undergo psychological testing and to submit doctor's reports as recommended by Fink. He also noted that Dr. Fink had recommended monitoring of her classroom and that would be done. (Bd. Exh. 237) On November 25 Mrs. Horwitz' attorney responded in a letter to the Board's attorney. On her behalf he respectfully declined further examinations on the grounds that Fink had found her fit for duty. He further declined to provide releases for further medical records. He stated that "any monitoring" of her classroom is retaliatory and punitive. He demanded that Sloan's directives be expunged from the record. (Resp. Exh. 47)

On November i6 Mrs. Horwitz wrote Superintendent Sloan as follows:

> Please be advised that I did not refuse to meet with my Principal. In accordance with section 5.5 of our [teachers' union] contract, I have the right for representation when meeting with an administrator when it can lead to disciplinary action. Since on 1 ~ asked me to meet with her regarding issues that she subsequently put in my file, I want to be sure that in all future meetings with her I have representation, which is my right. Therefore, I will be happy to meet with her at 1:35 PM on Wednesday if John McCl[u]skey is available to attend. I will let you know as soon as possible.
>
> In respect to Mrs. E..., I have asked for support from the Principal on several occasions and have not received any to date, nor have I received the acknowledgment that there is a problem. I believe that I am entitled to expect that support and that is the reason I have indicated that I will not meet with the E. . S until I have a meeting about the issues I raised in my memo. (Bd. Exh. 225)

The meeting with McCluskey, the Illinois Education Association UniServ Director, present took place on November 18. Also present were Biancalana, Sloan and Horwitz. Mr. McCluskey took notes.[27]

> Karen said and repeatedly said that she would not meet with the parent [Mrs. E] unless she had some additional support; the social worker and another teacher who has had some experiences dealing with the parent in question. Karen asked if Principal Biancalana would acknowledge that this parent had a history of being "difficult" and a problem but her Principal and Superintendent declined to acknowledge this was the case today or, so Karen alleged in the Principal's case,

[27] Biancalana also prepared minutes of this meeting. Mccluskey's are less conclusionary.

before this date.

Karen said she perceives the refusal to give her support, similar to that afforded others in dealing with this particularly difficult parent, as harassment. Karen repeatedly asked whether her Principal would acknowledge that this was a parent who was perceived to be a problem when pursuing questions about her daughter's performance. Karen said several times the student was performing well and that tardiness was her biggest problem and this could not entirely be the student's fault.

Karen then described a previous meeting with the parent in question, how a 15 minute scheduled meeting went on for 45 minutes, with the parent ending it by saying she was ill and should not be in a discussion this long. Karen again asked "How do we get on the same page?" (directed at Principal Biancalana). Superintendent Sloan repeated the consequences of Karen's failure to meet with the parent on Monday, November 23rd, would be dismissal for gross insubordination....

Karen again said she could not conform unless she had support, the support earlier specified. The Superintendent again told her that she had no right to set conditions. He acknowledged hearing her statement but added "you will fulfill your position as a teacher or be held grossly insubordinate."

The Superintendent tried to be clear cut that he [was] giving Karen an order and there was nothing to be added. The option of a 3:00 p.m. meeting [a time more convenient for Horwitz] was withdrawn and it was unilaterally decided by the Superintendent and Principal Biancalana to ask the parent to appear at 1:30 p.m. Karen then accused the Superintendent of inciting the parent because he knew the teacher would not appear at the appointed time. She also complained that there was no consideration of her rights or attempts to put past issues in the past so we could work things out.

> The Superintendent repeated his directive and the consequences of failure to follow it. Karen said she would be happy to bring the whole issue before the Board of Education and that she was denied appropriate Support.[28] The Superintendent, showing some signs of irritation and frustration, said the meeting was over and then opened the Principal's door. Resp. Exh. 75)

On November 23 Horwitz did meet with Mrs. E about Sanae's report card. The teacher's preliminary grades were all excellent, except that her handwriting needed improvement and Horwitz also commented, as she had several times before, on Sanae's tardiness. Otherwise the report card was entirely complimentary.

[28]The Principal's position, stated in a September 29 memo to Horwitz, was that all teachers were required to meet with parents upon reasonable notice and that it there were problems with the parents becoming abusive, it would be dealt with (presumably as soon as warranted, whether immediately or subsequently). Biancalana's September 29 memo had implied that 48 hours would be reasonable notice. McCluskey raised the issue with Sloan in the context of a unilaterally imposed working condition.

At the beginning of each school year each teacher was required to set forth a statement of his or her goals for that year on a Goal Setting Form. When Horwitz submitted her statement of goals in or about September, Biancalana sent them back, asking for a separate statement with respect to teamwork. The Principal noted that there had been adverse comments on the teacher's cooperation with the fourth grade team which continued after her transfer to fifth grade. On November 23 Horwitz submitted her revised statement of goals which included:

> In accordance with the express direction of the principal, I reiterate as my third goal the following

(which I was also required to include in my goals last year although, in my judgment, the requirement is retaliatory and without basis in fact): I will dedicate myself to participating in, and facilitating a strong team ethic with the other teachers in the fifth grade.

I will regularly attend grade level meetings, work on grade level projects as a team,
keep lines of communication open, and help create a successful fifth grade team,
similar to the successful fourth grade team that operated prior to fail of 1996. I will
employ the same methods that led to my success with my teammates from fail of
1993 - summer of 1996 as well as during the 1997-98 school year.

The success in my participation on our fifth grade team can be measured by the presence of team projects as well as positive relationships amongst our team members. The absence of ongoing problems occurring amongst team members constitutes successful relationships on my part; if other team members choose not to discuss and work on problems and merely report them to you, it constitutes a reflection of their limitations as team members since I will continually be open to conflict resolution if the need arises. (attached to Bd. Exh. 144)

The Principal found these statements unacceptable and so notified Horwitz in a memo dated December 15. She wrote that Horwitz' statements demonstrated "an unwillingness to recognize past concerns and a resistance to committing to participation in, and facilitation of, a strong team ethic with other teachers. ... A recognition of a need for improvement in this case is necessary before you can accomplish success in the area of teamwork. Please pay particular attention to developing in this area." (Bd. Exh. 144)

On November 24 there was another meeting between Horwitz, Biancalana and Sloan, attended by McCluskey, who

again took notes. McCluskey's notes reflect his perception that, except for the Superintendent's repeated warnings of disciplinary action for insubordination, most of the meeting was non-disciplinary in nature and dealt with problems, both real and perceived. It was also conducted, in the view of the author of the notes, with "reasonable decorum." The substance of the meeting had to do with the discipline of one of Horwitz's students of which she had no notice. Biancalana

admitted a failure of communication. Horwitz said that it was an inappropriate omission on the part of the Principal and once more stated that she and Biancalana were "not on the same page," a statement which the Principal took as an accusation. (Resp. Exh. 76)

On December 2 Horwitz met again with Mrs. E and the Principal to address the parents' fifteen complaints. On December 3 Horwitz wrote the mother:

> I want to advise you that as a result of our conference yesterday, I decided that I need to adjust one of the marks on [Sanae's] fall trimester report card. As I explained during our [November 23] conference, I have been concerned about her ability to accept corrections and disappointments. Since I was informed during our conference yesterday, [sic] that the fifteen points in your letter of complaints were based primarily on [Sanae' s] perceptions, I believe she is seriously in need of help regarding this area. Since I focus on being fair to my students and meeting their individual needs, in my professional judgment, Sanae has some serious issues with interpreting and processing decisions made by authority figures. Prior to our conference, and based on communications with you, I had attributed this discrepancy in thinking as primarily between you and myself. Now that I know that is attributable to her perceptions, I decided that I needed to make that change. In accordance with school policy, I am informing you of this change.
>
> I plan to develop a strategy to work on this problem

> with Sanae in conjunction with the Pupil Services [special education and exceptional students] team in addition to the issues I had raised in my request for services I submitted to George Tuttle on 12/2/98. I am confidant that, with the help of the team of professionals, we can help [Sanae] be all that she can be. I look forward to working with them to solve the problems and eliminate the concerns you put forth in behalf of Sanae. (Bd. Exh. 116)

The parent felt that the change was unwarranted and that it was retaliation against herself. She again complained to Biancalana in writing, who directed Horwitz to change the grade.[29] Horwitz refused on the grounds that she had to be honest, but acknowledged that the grade belonged to the school. Biancalana ultimately gave the child a higher grade for handwriting on the final report card. She did not, however, change the marked need for improvement in accepting corrections and disappointments and observing classroom/school regulations. Nor did she change any of the teacher's narrative comments.

> On December 17, Biancalana gave Horwitz eight "directives" growing out of the problem with the E's.
> I. in response to the parental concern for a lack of open communications, you are directed to return the [Es'] phone calls promptly, e.g. typically within two working

[29] The Board presented the change as being in the handwriting, but it is evident from all of the correspondence that the modification involved Sanae's alleged need to correct her objectivity.

days.[30]

2. If the [Es] request an in-person conference you are directed to schedule an in-person conference promptly but no later than ten (10) working days from the request.

3. In response to the parental concern that you have yelled at Sanae in front of other students,[31] you are directed to refrain from raising your voice toward Sanae.

4. In response to the parental concern that you are directing questions or commenting about Sanae's parents to Sanae in class, you are to refrain from such actions and to share parental issues directly with the parents.

5. In response to the parental concern regarding your emphasis to Sanae that she is weak in math, you directed to encourage Sanae's accomplishments in math.

6. In response to the parental concern that Sanae is not rewarded in the same fashion as other students, you are directed to positively reinforce Sanae with the same type and frequency of verbal and other rewards you utilize with other children.

7. In response to the parental concern that you often write long letters to the parents promising things that you don't implement, you are directed to keep your communications with the [Es] succinct and to follow through with agreed upon plans.

8. In response to the parental concern that you have denied acknowledgement of Sanae's screened and identified gifted attributes, you are directed to provide Sanae encouragement and instruction that meets her identified gifted needs.

If you wish to discuss these directives, you will have an opportunity to do so at the December 18, 1998 meeting convened by Dr. Sloan. (Bd. Exh. 119)

---

[30] This apparently modified the prior 48-hour rule.

[31] Horwitz denied such yelling as well as all of the other negative behavior alleged in this memo.

On the same day, Dr. Sloan summoned Horwitz to a investigatory interview on December 18 to obtain Horwitz' response to ten points.[32] Those points included retaliation against Sanae by changing the report card, refusal to restore the original marks, alleged failure to respond to the Principal's directives, allegedly unprofessional and insubordinate remarks to Biancalana in the presence of students and parents, alleged failure to work cooperatively, shouting at and demeaning students in the presence of others, insistence on substituting her judgment for that of certificated professionals in the area of special education services, refusal to under psychological testing and refusal to return the original of the audio tape recording.

Third Notice of Remedial Warning

The investigatory interview was conducted on December 18 with Sloan,

[32]The short notice and consequent disruption to Horwitz' plans for her students that day were protested by the Union.

Biancalana and Pupil Services Director George Tuttle (an admitted supervisor). Horwitz was accompanied by UniServ Director McCluskey. Minutes were kept by Tuttle. The administrators told the teacher that they were recommending a third notice of remedial warning and that she had the right to respond. The matter was set for the Board's December meeting but was postponed due to Mrs. Horwitz' absence on a previously scheduled vacation.

On January 5 the Board heard from Mrs. Horwitz' attorney in executive session with respect to the proposed Third Notice of Remedial Warning. That attorney not only gave his opinion that the directives to turn over the original tape recording and to undergo psychological testing were unlawful, he stated that Mrs. Horwitz would refuse to

comply. The Union's UniServ Director stated his view that Mrs. Horwitz was being singled out for discriminatory treatment in retaliation for her having filed an EEOC age discrimination complaint and subsequent lawsuit against the Board. The Board then adopted its Third Notice of Remedial Warning. Since the matter of the tape recording had been previously dealt with, the Board dropped that item from the warning, but decided to issue an administrative letter with respect to it instead.

The Notice once again recited unprofessional, insubordinate and unsatisfactory conduct and Horwitz' failure to comply with previous directives. It contained nine specific items, the 10th dealing with the tape having been dropped. 1. It alleged retaliation against a student (Sanae) by downgrading her report card. 2. It recited Horwitz' failure to restore the report card to the originally proposed grade. "You must restore the student's report card..... by January 8, 1999." 3. It alleged "repeated unwillingness" to schedule parent teacher conferences despite Biancalana's directives to do so. 4. It alleged "repeated refusal" to schedule principal teacher meetings. 5. 'Your unprofessional and insubordinate comments directed toward the Principal in front of students and parents. 6. Your failure to work cooperatively [with other staff] and your demeaning comments about student and other employees.... 7. Your shouting at students and criticizing students in the presence of other students. 8. Your insistence on substituting your judgment in place of certificated professionals in the area of special education services and your failure to work cooperatively [with Tuttle]." 9. This dealt with the refusal to comply with Sloan's November 17, 1998 directive to submit to psychological testing and submission of medical records as Fink had recommended. "You must comply with the Superintendent's directives by January 22, 1999."

Ballantyne testified that there were three considerations underlying adoption of this notice: the charges of insubordination and unprofessional conduct, whether there had been a good faith effort to remediate the prior warnings

and the extent of the harm done by Horwitz on the staff, the community, the administration and the classroom.

Mrs. Horwitz responded on January 21. (Resp. Exh. 195) With respect to Sanae's report card she denied any retaliation. She stated that the changed grade was the result of information received at or after the November 23 conference and was justified~½~~$'I stand by my professional judgment as to the validity and appropriateness of every aspect of the report card in question. I respectfully decline to modify the report card which I prepared." She acknowledged that it was the right of the Principal and Superintendent to modify the grade, which they had done. She also recited the vast amount of time devoted to dealing with Sanae's parents. With respect to alleged failure to respond, she wrote that she understood this to be a reference to the same parent and that she had in fact been responsive, scheduling meetings consistent with her schedule. To the extent that the Board was making requirements not imposed on other teachers (apparently referring to the alleged 48-hour rule) she was being discriminated against. She denied that she had refused to comply with Biancalana's requests to schedule parent meetings. She wrote that she had "regularly responded" to such requests. She asserted that she had been repeatedly assured that there were no formal complaints against her and that she had responded to all parental concerns. She denied, without comment, unprofessional and insubordinate comments to the Principal and also the alleged failure to work cooperatively. She admitted criticism of her students in accordance with her duties, but denied shouting at them. She denied alleged inadequacies in her interactions with the special education team. On the contrary, she asserted, she had attempted to be cooperative in all respects As to psychological testing and the release of medical records, she referred the Board to her September 24 response and "respectfully decline[d]" to comply on the grounds that she had been found fit for duty.

On January 6 a Pupil Services meeting was convened to consider Horwitz' recommendation of social services for Sanae. Horwitz asserted that Sanae was relaxed and happy at school but the mother reported the student's nightmares. Horwitz concluded that the problems must be at home. The minutes of the meeting reflect that the source of the student's anxiety could be either home or school or a combination of both. On January 14 Tuttle wrote Horwitz, asserting that her attitude at the meeting, especially refusal to accept the possibility that her criticisms of Mrs. E in front of the student may have created the reported anxiety, was in violation of the notice to remedy. He instructed the teacher "to put aside any acrimony that you perceive between yourself and the parents and concentrate on implementing clear and effective communication with Sanae and her family. Currently, instructional services which you are providing to Sanae lack requisite interpersonal involvement."

On January 11 the Principal wrote to Horwitz again about the Es. She wrote that she had another request for Sanae's removal from Horwitz' classroom, based on alleged continuing retaliation, unresponsiveness and rudeness. She alleged that Horwitz' suggestion of meeting times, her returning

phone calls without a telephone number in the message and similar acts were "unresponsive" to the parents. She directed Horwitz to respond "appropriately" or face discipline.

On January 19 Biancalana wrote to Horwitz about reports from Mrs. E concerning the Teacher's classroom behavior with respect to Sanae. Among the remarks attributed to Mrs. Horwitz were "I don't understand why your mother was asking me about the science test," "Don't get me wrong, just because I have a problem with your mother doesn't mean I have a problem with you," and "The other day you were in the office and your mother was talking with the principal and I noticed you were uncomfortable." These remarks, the veracity of which could not be confirmed since

the student did not testify (nor did her mother), were asserted to be "insensitive" and "without purpose." It was alleged that these remarks (which were taken as true by the Principal) put the child in an uncomfortable position of being responsible in part for her mother's conduct. Horwitz was told "Please refrain from such conduct in the future."

On the same day the Principal wrote to Horwitz about showing disrespect during a faculty meeting on January 7 by openly reading a book during a presentation. Biancalana reminded Horwitz that presentations are for the benefit of the attendees. "Your blatant unwillingness to participate as a respectful audience member was both unprofessional and rude." Biancalana instructed Horwitz to try in the future "to be involved."

Horwitz was absent from school on January 19. Her substitute, Victoria Roche, was able to find no lesson plans for that date. What she did find was little more than a daily schedule with a couple of references to particular materials. When she reported this to Biancalana, the Principal asked her to write it up. Whereupon the Principal delivered a memo to Horwitz dated January 21, stating that failure to prepare lesson plans was both unprofessional conduct and a matter about which she had been warned in April. After receiving this memo, Horwitz confronted Roche on January 22 and asked why she had written this up. According to Biancalana, Roche was "visibly shaken" by this confrontation when she reported it to the Principal. Horwitz responded that her lesson plans, apparently consisting of "post-it" notes on the schedule, had been in a binder on the table, but that when she asked Roche about it, she found out that the notes were no longer there. She also reported that her conversation with Roche, far from being confrontational, had been cordial. Horwitz asked for "an explanation as to why I am not afforded an opportunity to discuss alleged encounters with the colleagues you accuse me of having intimidated...." Horwitz noted that she had been asked for a specific goal on collegial relations and expressed the desire for the opportunity to do 50, presumably in an open discussion.

Biancalana did schedule such a meeting for February 5; Horwitz failed to respond and did not appear.

On January 22 the Superintendent and Principal together wrote Horwitz as follows:

> For the past 5 months your relationship with Sanae F and her parents has steadily deteriorated. As you know we are very reluctant to move students from a teacher's class and we have worked diligently with you and the student and her parents to address this problematic relationship. Unfortunately, your unwillingness to accept any responsibility for problems manifested in this relationship (as documented in George Tuttle's memo of January 14, 1999, and as discussed in our many conferences) has made resolution of the conflicts impossible. Therefore, be advised that Sanae E is being removed from your class and will be placed in Mr. Baker's class as of January *25,* 1999. This action is being taken at the parents' requests (see attached letters) and based on the administration's judgement [sic] that it is in the best interest of the child. Your unprofessional conduct related to this matter will be addressed under separate cover. [original emphasis] (Bd. Exh. 129)

On January 28 Dr. Sloan wrote to Horwitz. He stated that her refusal to submit to psychological testing was noncompliance with the Third Notice of
Remedial Warning and further evidence of insubordination. He further notified her that, pursuant to the Board's directive, her classroom would be monitored beginning on February 1 and that the observations would be reviewed at a meeting on March 15.

Also on January 28 the Superintendent and Principal elaborated on separating Sanae and her parents from Mrs. Horwitz.

> As you know, it became necessary for us to remove Sanae F from your classroom as of January *25,* 1999,

because of your inability to interact and resolve differences with Sanae's parents, which resulted in your retaliation against Sanae. Such retaliation is prohibited and will not be tolerated. The transfer of a student is a remedy which has been exercised only on extremely rare occasions in this District. In the case of Sanae, we had no alternative but to transfer her because of your total unwillingness to cooperate with the administration in striving to amicably resolve this matter.

It has come to our attention that you are continuing to be uncooperative with the administration and and [sic] thereby are continuing to jeopardize Sanae's best educational interests. Despite an express directive from Principal Biancalana to keep information relating to Sanae and her parents confidential, as mandated by state law under the Illinois Student Records Act and by federal law under the Family Educational Rights and Privacy Act, which regulates the privacy rights of parents and students, you are unjustifiably disclosing information about Sanae and her parents to students and staff.

Be advised that you are hereby directed not to discuss any aspect of Sanae, or her parents' educational concerns, with any students, parents or staff~ Additionally,

since Sanae is no longer a student in your classroom, you are no longer have a legitimate educational interest in her educational progress in the School District and are not entitled to information as to her future progress and performance. Be advised, any attempt on your part to monitor Sanae and/or her parents may violate both state and federal law and you are directed to refrain from any interference with her educational progress.

If you have any questions, please do not hesitate to contact either Dr. Sloan or Dr. Biancalana(Bd.Exh. *130)*

Horwitz Contract Grievances

Toward the end of January Horwitz filed three

grievances pursuant to the collective bargaining agreement with the Teachers Union. All three grievances dealt with Sanae and her family. Each grievance alleged a violation of Article V, Faculty Rights, Section 5.10, which, in pertinent part, provides that the teacher shall be advised promptly of any complaint which is to be utilized for evaluation or disciplinary purposes and of any "consequential" complaint by parents. The first grievance alleged such a violation in Biancalana's letter of January ii, which reported the Es' request to remove Sanae from Horwitz' classroom and alleged failure to return their calls and rudeness. The second grievance alleged a violation in Tuttle's letter of January 14 which stated that Horwitz' actions at the January 6 Pupil Services meeting was "uncooperative and unprofessional and ... not compliant with existing notices of remedy...." The third grievance alleged a violation in Biancalana's letter of January 19 which stated Mrs. E's report that Sanae had been singled out and embarrassed in front of the class because of the mother's actions and accused Horwitz of violating prior notices to remedy. There was a step one meeting to discuss the grievances on February 5. On February 15 Biancalana denied the grievances, stating that each of the letters was proper and warranted. The grievances were advanced to step two. After a step two meeting on March 8, Superintendent Sloan denied each grievance in writing on March 15. He asserted that Horwitz had been properly notified of all parental complaints, that the three letters in question were not disciplinary but merely reminders and/or observations for the purpose of improvement. The grievances appear not to have been advanced further.

On February 10 Horwitz responded separately to each of the administrators' January 28 memos. (Bd. Exh. 243, 244, 320) With respect to the directive to undergo psychological testing, she once more asserted that the District well knew that she was fit for duty, Dr. Fink had declared as much, her own doctors had supported that conclusion and that was the end of the District's interest in her health. "Moreover, as a matter of law, I am entitled to test any claim that I am unfit

for duty without being charged with insubordination.[33]

[33] This was an apparent reliance on the Dusanek and Weed cases, cited *infra.* The Board had never declared her unfit for duty. Its concern was to determine that fact.

> With respect to the assertion that the District was concerned about the effect of Horwitz' alleged conflicts with parents and students, Horwitz denied that she bad any conflicts of that nature, with the sole exception of Sanae's parent. She wrote that the District's alleged concern was purely pretextual and was a cover for the administration's efforts "to make my working conditions intolerable-"
>
> She wrote further that she would avail herself of legal remedies if she were monitored on any basis different from other teachers. She asked that any such monitoring be by impartial persons and be videotaped. Finally she requested that she be accompanied by her Union representative at the March 15 meeting.
>
> With respect to the removal of Sanae from her classroom, Horwitz denied that it was for educational purposes or due to her alleged retaliation against the student and her mother.
>
> > That assertion is categorically false in all respects.. The difficulties which I experienced with this parent were no different from those experienced by other teachers to whom her child has been assigned in the past. The sole difference was that, in my case, I was refused the assistance and support which has been routinely extended by [the] Administration to other teachers to whom the child has been assigned. The assignment of this student to my classroom contrary to the parent's expressed wishes, the consistent refusal of support to me, and the use of the parent's baseless complaints as the basis for punitive action against me, is

part of the District's unlawful campaign of harassment and retaliation against me. The removal of the student from my classroom was done for your own purposes, in order to provide you with a basis for claiming that I failed in my interactions with the parent

Horwitz denied any inappropriate disclosure of student information. She asserted that she had responded to the questions of other staff members involved in Sanae's education. "I have also shared my concerns about this parent's abuse of conference and communication privileges and efforts to dictate teaching methods and grading with certain of my colleagues who have experienced or may in the future be subject to this parent's abusive treatment Beyond that, I have disclosed no information regarding the student to staff." With respect to the order not to monitor Sanae's education, Horwitz asserted that she had a right to gather evidence "to defend myself from the baseless charges you have made against me in connection with this student and her parent and to establish that Administration conduct in that regard has been unlawfully retaliatory.[34] Moreover, she asserted that this parent's interaction with the school staff were matters of "common concern" such that discussion of them constituted "protected concerted activity."[35]

---

[34] On March 5 Sloan denied any retaliatory intent. He asserted that the Board had legitimate grounds for ordering psychological testing, that the monitoring would be by qualified administrators and declined to videotape those observations. He also asserted that Horwitz had been afforded substantial assistance in connection with this student. He further warned against any disclosures to others with respect to Sanae and her family.

[35] Reference is to the Illinois Educational labor Relations Act which protects against retaliation "concerted activity for the purpose of collective bargaining or other mutual aid or assistance."

On February 11 Biancalana and Horwitz had a meeting. On the same day

Biancalana wrote to Horwitz:

> Subsequent to our meeting today, I want to go on record stating you are continuing to be insubordinate by not following my directive of not submitting memos to parents that include my name without prior approval. The inclusion of my name infers my approval of the creditability of the content of the document. In order to secure my approval, you must submit it to me prior to distribution
>
> As I have advised you in the past, I am not going to allow Mr. McCluskey to routine meetings that center on student issues and do not have the focus of teacher disciplinary action as their agenda or intent. You, and all other teachers, are expected to attend routine meetings to discuss children's issues. Clearly, if we are going to work together for the benefit of children, this cannot be subject to Mr. McCluskey's availability. This is non-appropriate forum for Mr. McCluskey's attendance. Failure to present yourself for meetings to discus~ student issues will be further evidence of your gross insubordination and will be out of compliance with specific directions you have received in notices to remedy. (Bd.Exh. 16l)

Also On February 11 Sloan wrote to Horwitz about her recent refusal to accept hand-delivered writings from the administration. He ordered to accept letters and memos which were hand-delivered under pain of further discipline for gross insubordination.

Half Day Sick Leave

On March 1 Horwitz called the school to notify them that she would be taking a half day of

leave the next day. On March 2 Horwitz took a half day of sick leave in the afternoon, having attended school in the morning. Sloan, in writing, questioned the purpose of the absence, noting that Horwitz looked fit. Horwitz responded, in *what* can only be described as a snide tone, that the contract provision for sick leave covered not only personal illness but also illness in the family. Sloan expressed sorrow for the family illness, but requested the contractually required particulars. On March 12 Horwitz replied [u]nfortunately, I *am* unable to meet your demanded time line [by the end of the day] since I have been unable to contact my attorney for consultation. I will fulfill your order as soon as possible." She also asserted that the request far information was in violation of the collective bargaining agreement since other teachers were not subject to the same demands nor had she been prior to the filing of her lawsuit. On March 15 Horwitz wrote to Sloan on the same subject in a similar tone. She asked a number of questions, which may have been rhetorical, about the difference between a half day and a full day, between personal illness and "a serious illness that jeopardizes the life of a family member." She asserted that the Superintendent knew that "I have a daughter and she could need medical attention. At no time did Horwitz assert that it was renewed the request for information supporting a sick leave on March 2.

her daughter or any other named family member nor specify the nature of the emergency. On March 24 Sloan noted that Horwitz had been "unresponsive" and her daughter or any other named family member nor specify the nature of the emergency. On March 24 Sloan noted that Horwitz had been "unresponsive" and renewed the request for information supporting a sick leave on March 2.[36]

---

[36] By this time Horwitz was in a more extended sick leave due to her own

On March 4 Biancalana warned Horwitz about lack of response and disrespectful response on March 1. Biancalana asserted that she had called into the classroom twice with no response, that she had used the classroom public address system three times, that the students had reported that Horwitz was out of the classroom and the third time Horwitz had responded "angrily." Biancalana had been attempting to notify Horwitz of a schedule change. Horwitz claimed that it had been a problem with the intercom system. Biancalana responded that all intercom problems had been corrected before March 1.

On March 15 a conference was convened to discuss the observations of Horwitz' classroom that had been made over the prior six weeks by Sloan (2 times), Tuttle (2 times) and Biancalana (several times). Horwitz was accompanied by one of the Union's UniServ Directors. The observations were almost entirely negative.

Final Absence and Recommended Discharge

Beginning the next day Horwitz again was absent on sick leave. According to the District's notes, Horwitz left a message that she would be out for "several days." The next day Horwitz' physician allegedly advised her to stay out "the rest of the week." On March i8, there was no word from Horwitz. On March 19 Horwitz notified Biancalana that she would be on sick leave for at least one month:

> I was able to see my physician, Dr. William Ciganek, yesterday evening. Dr. Ciganek advised me that, for medical reasons, I need to absent myself from my work environment at least through April 16th. While I hope to return to work on April 19th, my ability to do so will

---

condition.

depend on the doctor's assessment of my medical condition as that date approaches. If my absence is going to be of longer duration, I will advise you as soon as I become aware of that fact.

She also wrote that she had prepared lesson plans only a week ahead of her last day of work, so that the last plan was for Monday, March 22.

Beginning on March 23 and continuing thereafter, Sloan requested a physician's certificate justifying this absence. He wrote that Horwitz would be paid for the current pay period, but that the District would withhold further pay until her absence had been properly documented. Horwitz wrote that she would supply a doctor's certificate as soon as her physician returned from his absence. Dr. Ciganek returned on April 5, but Horwitz did not provide a physician's [sic]statement until April 14, at which time she provided a "To whom it may concern" letter from Dr. Ciganek dated April 12 which stated simply that on March 18 he had recommended her absence from work "for medical reasons. He stated further that upon examination on April 5 her condition "had not improved." Dr. Ciganek provided no specifics as to the nature 6f the condition, whether emotional, psychological or physical, nor any organs implicated or how they were implicated. On April 16 Sloan wrote Horwitz that Ciganek's opinion was inadequate and that the District would not issue further paychecks until it received an adequate medical explanation for her absence. On April 20 Horwitz faxed Sloan a message that she had asked Dr. Ciganek for a more detailed statement and that she would furnish it when it became available.

On April 21 Sloan wrote:

You have been absent from your full-time teaching position since March 16, 1999, for undisclosed reasons. Upon your initial notification of your anticipated absence for a one-month period, we requested that you provide us with a physician's certification as to the reason for your absence pursuant to Section 24-6 of The School Code. Despite this notice of the need for a

physician's verification of the basis for your extended sick leave, you have ignored our repeated requests for verification regarding the medical reason for your absence. You have also refused to accept certified mail correspondence that has been sent to you. While you have ignored our communications, you have delivered written correspondence to the District demanding salary payments for days of sick leave absence for which you have not provided the necessary verification of illness. In addition, at no time during your extended absence have you made any attempt to communicate with your Principal to ensure that your students are progressing according to your lesson plans. In fact, you provided no extended lesson plans for your substitute and never provided any assistance or guidance to assist your substitute in the direction of your classes.

Your repeated refusal to respond to the District's requests for verification of the basis for your extended absence from your full-time teaching duties and your unprofessional conduct in failing to communicate with the District's Principal regarding lesson plans for substitutes has adversely affected the District's students and has disrupted necessary planning for students' educational programs. Based upon this continued insubordinate conduct and your established pattern of unprofessional and insubordinate conduct as evidenced by issuance of Three (3) Board Notices of Remedial Warning, I will submit an administrative recommendation to the Board of Education for your termination as a tenured teacher.

The Board of Education will review and consider this administrative recommendation for discharge at a special Board meeting at 6:00 p.m. on Friday, April 23, 1999. You and your Association and legal representatives may meet with the Board in executive session to respond to the administrative recommendation

prior to Board review and consideration of this personnel action. In addition, I have scheduled a meeting at 9:00 a.m. in my office to allow you the opportunity to discuss the basis for this administrative recommendation for discharge prior to the review and consideration by the Board. You and your Association or legal representative may attend this meeting which will include Principal Biancalana. (Bd.Exh. *265)*

The letter was hand delivered to Horwitz at her home.

On April 23 Horwitz' attorney sent by facsimile to the Board's attorney a "to whom it may concern" letter from Dr. Ciganek dated April 22. In this letter Dr. Ciganek identified Major Depression as the presenting diagnosis in March. He identified some of the usual symptoms of depression. On April 5 there was only slight improvement. But on April 19, he declared, there was "a greater degree of improvement ... to the point ..... she would be able to return to work in the near future and effectively carry out her duties and responsibilities as a teacher." Nonetheless, he continued to express his concern about the environment at school which had been reported to him as "hostile and stressful." Accordingly, the return to work would be recommended only if "there is a significant modification in her working environment (i.e., a lessening of hostility and undue stress)."

The Board's action dismissing Karen Horwitz and adopting charges also occurred on April 23. (Bd. Exh. 301)

ANALYSIS

The Illinois School Code gives the Board the right to dismiss or remove a tenured teacher for "incompetency, cruelty, negligence, immorality, or other sufficient cause... and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the school require it...." (105 ILCS 5/10-22.4) The action of dismissing a teacher must be by the majority vote of the Board and must be based upon charges and specifications adopted by the Board. The notice of dismissal must then be

promptly served upon the teacher. The teacher may promptly invoke her right to have the matter heard by a hearing officer. There is no question here about the procedure. The patties agreed that the matter is before the Hearing Officer on the merits.

The Board must prove the allegations against the teacher by a preponderance of the evidence. *Bd. Ed.* City *of Chicago V. State Board,* 113 Ill. 2d 173, 186 (1986) Unless the conduct is found to be irremediable, a tenured teacher must be given an opportunity to remedy her deficiencies before she can be discharged. (See discussion of irremediability, *infra.)*

Although the 1993-1995 incidents prior to the Board's continued contract with Horwitz were fully litigated, they must be deemed background facts only. Had the Board considered Horwitz' performance prior to the fall of 1995 to have been less than satisfactory, its recourse was not to continue her teaching contract. The Board had full knowledge of her alleged derelictions at the time and accepted her for tenure nonetheless. The Board cannot now be heard to assert as reasons for canceling her contract actions which occurred before it was executed.

On the other hand, the criticisms and instructions given to Horwitz before the fall of 1995 could not be ignored. In particular, Biancalana had warned her about insubordinate behavior on June 8, 1995 and had issued clear and direct instructions on June 12, 1995 regarding dealings with outside personnel, parents, students, other staff members and her supervisors. She ignored those instructions at her peril. Those instructions and criticisms were not erased by the grant of tenure.

In making findings herein, the hearing officer has generally ignored those matters where the only evidence of the conduct is a hearsay report, usually someone reporting to Biancalana on conduct outside her presence, especially when

Horwitz denied that conduct, either at the time or at the hearing. While hearsay may be admissible in administrative hearings, the matters alleged against Mrs. Horwitz were susceptible of competent testimony. in most cases such evidence was forthcoming. The matters alleged against Mrs. Horwitz were too serious to be the subject of evidence not competent under the rules of evidence. This observation is especially true of the Board's allegations that several parents had shown fear of retaliation against their children by Mrs. Horwitz. On the other hand, where Horwitz admitted the conduct, but attempted to explain it, the hearing officer has relied on those admissions.

The analysis of the evidence begins with the third notice to remedy. In that notice there were 9 specifics and one assumed because it had been dealt with in the second notice.

The Report Card

Sanae's report card was the subject of items 1 and 2 in the third remedial notice. The Board has proved that the change in the report card was retaliatory. The child had not been found to need improvement in her perceptions before the November 23 conference. After Mrs. E reported that her 15 points were based on Sanae's reports, Horwitz wrote: "As I explained during our conference, I have been concerned about [Sanae's] ability to accept corrections and disappointments. Since I was informed during our conference yesterday, that the fifteen points in your letter of complaints were based primarily on [Sanae's] perceptions, I believe she is seriously in need of help

regarding this area." (Bd. Exh. 116) While a teacher may rely on a parent's observations in determining when a child needs to improve, they must correlate with the teacher's own perceptions. Here nothing had changed except the conference and the parent's observation of the source of her complaints about the teacher. Horwitz marked down the child solely

because of what was reported at the conference devoted to the student's report card, not due to her own observations. Despite Horwitz' protestations that the reduced grade was based on Sanae's needs, it was directed against the mother's fifteen complaints. Had the mother not written that letter, the mark would not have been reduced.

As Biancalana pointed out to Horwitz and Horwitz admitted, the grade belongs to the school and is not the teacher's. If the school wants to give a higher grade than the teacher recommends (an admittedly unusual occurrence), that is its right. Biancalana did, in fact, change the report and gave the higher grade. Consequently, this was largely a tempest in a teapot. The student's ability to accept corrections in fifth grade was hardly likely to keep her out of a respected institution of higher education. Nor would the need for improvement in handwriting. And, in the end, the student did receive the desired grade.

Nonetheless, Horwitz' refusal to change the grade as instructed was both insubordinate and unprofessional. While it was hardly a matter which was likely to recur, it accumulates with other similar conduct to show the irremediable nature of Horwitz' defiant conduct.

The Scheduling of Meetings and Public Comments

In items 3 and 4 of the third remedial notice Horwitz is accused of failure to comply with directives to schedule parent teacher conferences and principal teacher conferences. In items 5, 6 and 7 of the third remedial notice Horwitz is accused of making insubordinate and unprofessional comments about Biancalana in the presence of students, of making demeaning comments about students and staff in the presence of others and shouting at students and criticizing them in the presence of others. These allegations are discussed in other contexts herein.

Although much was made during the hearing of the so-called "internet article," the Board does not make any

allegations relating to it in its argument. Nonetheless, a few observations are required. During the spring of 1998, when there was a campaign for election to the Avoca Board, Mrs. Horwitz authored and submitted to The Wilmette Life, a newspaper circulated in the area of the election, a commentary ostensibly supporting candidates opposing the incumbents. It largely dealt with her personal issues, about which the incumbents had allegedly done nothing. Later, another version, not authored by Horwitz, found its way onto the website for the insurgent slate, hence the appellation "internet article." The Board was well-advised not to raise these

events as a source of discipline. Such an allegation would have involved analysis of pertinent case law under the First Amendment involving the right of public employees in general, and teachers in particular, to speak out on matters of public concern. It also might have involved allegedly protected activity under the Illinois Educational Labor Relations Act to engage in "concerted" activities for the purpose of mutual aid among educational employees.

Nonetheless, this publication was criticized by the Board at the time. question arises as to whether the subsequent actions of the Board were retaliation against Horwitz' having engaged in allegedly protected activities. There is no evidence in support of such a claim. No statements by Board members relating that event to the others were offered in evidence. The criticism by the Board did not begin with these events and there was ample support for its actions subsequently to the extent found herein.

Failure to Work Cooperatively

In items 6 and 8 of the third remedial notice Horwitz is accused of failure to work cooperatively with other staff, especially in the area of special education.

The Individuals with Disabilities Education Act, 20

U.S.C. §1401 et seq. (IDEA) has as a major goal the involvement of parents in the education of children with special needs. See, generally, *Bd. Ed. Henrick Hudson District V. Rowley,* 102 5. Ct. 3034 (1982). Parents are to be provided with both procedural and substantive rights in the education of children so identified. While the identification of such children is often the principal responsibility of "professionals," especially those, such as social workers and school psychologists, who have special training in the administration and interpretation of diagnostic tests and assessments, parents are not excluded at any point in the process. When it comes to developing an individualized education program (IEP) for such a child, IDEA is quite specific as to the required members of the team. In addition to the parents, "at least one regular education teacher of such child" is to be included if the child may be participating in a regular education environment. 20 U.S.C. §1414(d)(1)(B)(i and ii). The role of the regular education teacher is "to participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel...." 20 U.S.C. §1414(d)(3)(C).

To the extent that the Board is alleging that Horwitz was "substituting her judgment" for that of the "certificated professionals" in the development of IEP's, the Board has failed in its burden of proof. IDEA does not require that all members of the IEP team agree. The reason that teachers and parents are

required to be participants has to do, at least in part, with the fact that they may have differing views from the rest of the participants. The fact that Horwitz may have thought that she could handle the children involved in a less restrictive environment[37] and so stated in IEP meetings is not grounds

[37] The law requires that a child identified has requiring special education

for a reprimand unless it can be shown that she was unconcerned about what was appropriate for the child. The Board here has failed to demonstrate that the teacher's appraisal that she could deal with the students with a minimum of other services was a product of arrogance as opposed to a genuinely held belief. As Dr. Fink has noted, Horwitz regarded herself as a super teacher and the guardian of student rights. This was a sincere belief. In each case under inquiry here, the parents agreed with Horwitz' recommendations that she could deal better with the child with reduced or eliminated special education services. In proceedings such as these,[38] it is impossible to state that the parents were wrong to follow Horwitz' recommendations. Further, the fact that the plan recommended by Horwitz and the parents did not work well does not establish that it was ill-conceived. Hindsight is always 2O/2O.[39]

Pedagogical disputes, particularly those concerning students with special needs, are outside the scope of this proceeding.[40] That Horwitz felt that such students should be challenged and not coddled may or may not have correctly assessed those children's needs. What is unprofessional is to question the motives or abilities of other members of the

---

services receive a free appropriate public education in the least restrictive environment." The services must be appropriate to the child's needs, but the fewer the services and the closer to the student's home room the less restrictive is the environment.

[38] In each of the cases under discussion the District had the option of requesting a hearing on the issue before an impartial due process hearing officer. 105 ILCS 5/1 4-8.02a(f)

[39] The Board asserts that Horwitz' failure to refer Justin for social work services when he felt ostracized and alone during the 1997-98 school year showed disregard for students with special needs. Once again, this proceeding is not the appropriate forum for determining whether the student should have been referred, and, if so, whether it was the teacher's responsibility to do it.

[40] Horwitz used time allocated for science lab for the preparation of written assignments, especially biographies of scientists. However, whether this was pedagogically justified for her students is impossible to judge.

team and to fail to cooperate with other providers of services to such a child. The education of a child with special needs is a team effort and Horwitz, as a member of the team, was required to work cooperatively with the special education professionals. In this respect, the Board has demonstrated that Horwitz set her own priorities above those of the IEP team and unduly criticized other service providers, much as she did with other colleagues.

For example, on March 13, 1998 Horwitz sent a memo to Anita Friede, a special education teacher and the case manager for Ben B., a student in Horwitz' fourth grade classroom. Although Horwitz had persuaded Ben's parents to terminate many of his services in order to allow her to work more closely with him, and those changes were made in his IEP, the IEP apparently did call for his attendance at Homework Club, an activity for children who had difficulties organizing and performing homework. When Friede brought to her attention the matter of Ben's frequent absence from Homework Club, Horwitz responded in pertinent part: "Although you may perceive Homework Club as important to Ben, I did not, and I therefore prioritized other responsibilities. In addition, I operate in a most professional manner and would not overlook a student's need for support if I believed it to be necessary...." (Bd. Exh. 26) In these comments Horwitz acted as if this were a child without an IEP, in which case she would have had more latitude in setting priorities. However, where Homework Club was included in the student's plan of services, she was not free to ignore that plan or to set different priorities from those in the IEP. If she felt that the IEP needed modification, it was her duty to bring that to the attention of the Director of Pupil Services for possible modification of the IEP in another staff meeting with the parents. She could not lawfully act unilaterally in such an instance. The same analysis applies to her desire to exclude Robby A., a student with an IEP, in the Little Red Schoolhouse activity she was conducting during her final year at Avoca. Inclusion in such activities was called for in his IEP.

Horwitz' mistrust of colleagues is also illustrated in the same March 13, 1998 memo to Friede. While the overall tone of the memo is complimentary concerning Friede's professionalism, competence and cooperation, Horwitz also wrote: "...forwarding your memo about me unnecessarily to administrators, especially knowing the situation in which I am in, indicates questionable motives on your part. Furthermore, since this administration operates in a covert manner, it appears to me that they have engaged you to accomplish their agenda...." (Bd. Exh. 26)

Horwitz' demeaning of special education services continued. In an IEP meeting concerning Jeff M. during her last year, Horwitz was advocating against "pull-out" services and other non-academic services. In the course of that discussion she said that social work services could be discontinued because the student was "not getting anything" from them. (Tr. 2390) Those services were being rendered to several students in Horwitz' classroom by Melissa. Filippi, a certified social worker. In a one-on-one meeting with Horwitz after the Jeff M. meeting, Filippi demanded to know the basis of Horwitz' opinion: "how would you even know, you are not in there when I am teaching." (Ibid.) Filippi then related this conversation to George Tuttle, the Director of Pupil Services. Horwitz openly expressed the opinion that failing grades were a motivator for Jeff M. and others with special needs. The purpose of writing an IEP for such students is so that they can get the assistance they need to achieve passing grades or better, if that is possible with reasonable effort on the child's part.

Such comments showed disregard for the purposes of special education.[41]

---

[41] No weight is given to the recurring comments that special education services were a "crutch" for the students involved. Apparently, this was a sincerely held belief that some students did not need assistance from other personnel in order to succeed. However, failing students as part of a special education program is unacceptable. How Horwitz dealt with special education professionals and providers who were members of a support team for those students is even more crucial here.

In the same year Amy Nakai, a tutor for special education children, resigned allegedly due to Horwitz' interference. (Tr. 1756-1759)

Similar allegations against Horwitz had been made years before by Cheryl Susman, another tutor for a different student, and by Dr. Geiske, that student's psychologist. Although the initial refusal by Horwitz to discuss the case with Susman, relying instead solely on written reports, was remedied, lack of cooperation with special education "resource" personnel had been brought to her attention for years and it persisted until her last year of service.

Horwitz' lack of cooperation was not confined to special education personnel. Among the first to complain of it were Laura Beaupre and Jeannie Schafer, fellow fourth grade teachers, during their first year of teaching fourth grade at Avoca. International Fair was a big fourth grade event every year. Students were assigned a foreign country to write up and/or make a presentation. There was a mass of materials that had accumulated over the years which was in the possession of Karen Horwitz as an experienced fourth grade teacher. Beaupre and Schafer asked for these materials early in the year and Horwitz stubbornly refused on the pretext that International Fair was not until the spring and that they didn't need the materials until well after the Christmas break. Whether Beaupre and Schafer were preparing too early was for them to decide; it would have done Horwitz no harm to turn over the materials. This controlling behavior was decidedly unprofessional.[42]

Horwitz initiated confrontations with and made accusations against those who could most benefit her. These

---

[42] The Board alleges that Horwitz together with Sheryl Haste, the other experienced fourth grade teacher - "refused" to have their classes participate in a mock election for the school conducted by the fourth grade. Horwitz and Haste were merely invited to participate by Beau pre and Schafer. They each declined for what they considered valid pedagogical reasons, including a reluctance to get into what might become partisan politics. More disturbing is Horwitz' remark to Schafer that she was not the only "star" teacher in the school and that she should be more deferential to those with more experience.

individuals included Tracy Gordon, a fellow teacher and the president of the local chapter of the teachers' union at that time.[43] This continued up to the very end when Horwitz questioned the leadership of Joe Baker, an experienced and talented fifth grade teacher who had participated in the formulation of the new science curriculum for the District. Horwitz repeatedly questioned whether Baker was her supervisor, when at all times he was acting in the same capacity as Beaupre and Schafer had earlier requested of her, offering advice, counsel and guidance, as she acknowledged. (See, e.g. Bd. Exh. 35, 10/29/97) She implied that her methods, especially with respect to science, a subject that she had not previously taught at the fifth grade level, were superior to Baker's, a science teacher with decades of experience. Her relationship with Baker deteriorated to the point of requesting that he document all conversations with her. (Bd. Exh. 77, 11/23/97)[44]

Horwitz' extravagant accusations against Biancalana and Sloan, and indeed the whole administration of the District, are well documented. They had little basis in fact. These include the remarks previously quoted to the effect that she had been "psychologically raped" and that the administration was acting "covertly" against her. While the administrators were admittedly documenting the record on her after their initial recommendations for remedial notices, and perhaps prior thereto, the memoranda from Biancalana

---

[43] The Board alleged that Horwitz had cast aspersions on Gordon's performance as a third grade teacher of students passed on to Horwitz in fourth grade. The only evidence for the truth of the statement was a hearsay recital by Principal Biancalana. On the other hand, there is direct evidence that Horwitz accused Gordon of being in cahoots with the administration and that she demeaned those, like Gordon, who had to work for a living. Horwitz was proud of the fact that her teaching was financially unnecessary and that she was teaching because she was called to the career.

[44] ".. Venette leaves me with no choice but to document our relationship ~he relationship between Horwitz and Baker]." (Ibid.)

and Sloan were temperate in tone and did not direct Horwitz to do anything not required of other teachers similarly situated. Similarly, as previously discussed, Horwitz was openly defiant in the presence of her supervisors.[45] Horwitz' initial relations with Biancalana had been good and at first she showed due deference and respect for Sloan. She knew, or at least expressed the opinion, that good relations with her supervisors were essential for her success. Her deliberate and self-destructive undermining of those relationships with little factual basis appears to be the result of something deeply rooted, as Dr. Fink implied. It was, at a minimum, unprofessional and it continued despite repeated warnings.

The Board alleges that Horwitz left inadequate lesson plans when she was absent for a month both in the spring of 1998 and at approximately the same time one year later.[46] Horwitz herself acknowledged that her lesson plans did not extend before one week in advance. The most problematic aspect of this is the dumping of the education of the children for whom she was responsible upon inadequately prepared substitutes, with no guidance and no assistance. Horwitz claimed to be a committed teacher. This is belied by her failure to contact the substitutes, discuss how the class was doing and the direction in which it could be led. (Castrogiovanni, Tr. 5222-23) While she claimed to be too stressed to be able to perform teaching duties, there was no

---

[45] Much is made of the June 6, 1995 confrontation of Biancalana. But Horwitz subsequently apologized (in her own way) and then the Board granted tenure to her. After that, as the Board shows, Horwitz failed to respond to pages on the intercom and other reasonable requests by Biancalana for her attention. Further examples of her open defiance, including her pointedly talking about discrimination when the Principal entered her classroom, are replete in the record.

[46] There is no claim that the lesson plans were inadequate for Horwitz' own use. She consistently received good evaluations on her ability and competence, as the Board concedes. what is at issue here is inadequacy of these plans for substitute teachers.

claim that she was hospitalized or bedridden. Indeed, there were reports, not denied, that she was seen out and about, shopping and otherwise engaging in normal activities. Calling the substitutes to discuss lesson plans and other class concerns need not have involved Biancalana, Sloan, Tuttle or any of the others whom she claimed upset her. It would have shown the concern that she claimed to have. Other teachers had done so during prolonged absences. (Ibid.) Horwitz herself had attempted to contact her substitutes during her absence in the spring of 1998 for the same purpose. Her failure to do so in 1999 while otherwise engaging in normal activities is inexplicable.

The Board asserts that Horwitz had confrontations with other teachers, staff and parents that "reduced them to tears." It is difficult to credit each and every such allegation, but there is no denying that Nakai resigned as a result of her interactions with Horwitz and that Beaupre, Baker, Gordon and others were so offended by Horwitz' conduct that they made complaints directly to the Board. The Board was entitled to rely on representations made directly to it in fashioning its remedial notices and directing compliance. Horwitz' continuing failure to get along with colleagues was damaging to morale and efficiency and constituted unprofessional conduct as alleged.

The Board also alleges that Horwitz demeaned students, calling them "stupid" or "misfits." The "stupid" remark took place in the context of a teachers' staff meeting during the 1993-94 school year. While it was a poor choice of words, such remarks in a meeting which no students and no parents attended and in which there should be a free exchange of ideas, should not constitute grounds for discharge. One of the allegations of the use "misfits" was based on double hearsay and is given no credence. The other was in a description of her class to Mrs. K., the mother of a student. While again it was a poor choice of words, Mrs. Horwitz explained her meaning: that the children were of diverse needs and not suited, in her opinion, to her classroom. No specific children were mentioned; it was a description of

the classroom as a whole. (Tr. 732) While regrettable, this passing remark, not describing any particular student, is not grounds for discipline.

Relations with Parents

Although not expressly included in the third notice to remedy, the Board alleges that Karen Horwitz engaged in unprofessional communications with parents. This allegation is based in part on her relations with Mrs. D during the 1994-95 year. The Board cites discussions with Mrs. D in the lunchroom, at least one of which Mrs. D initiated, and her referring to the parent as "crazy" in discussions with Biancalana. However, this conduct occurred prior to the grant of tenure and cannot be used as the basis of present discipline, having been

condoned by the Board's action. What is relevant for present purposes is that Horwitz had been warned against such behavior in future. (Bd. Exh. 6, drafted June 12, 1995, withheld on the advice of Horwitz' physician and sent August 1, 1995, Bd. Exh. 9)

The Board also proved that Horwitz told another parent, Mrs. M., that she was unprepared to teach science, a definitely unprofessional remark. Horwitz may have felt unprepared to teach science at the fifth grade level, but it was her obligation to the District to put the best face on the matter when addressing parents.

Most of this behavior had to do with Sanae's mother, Mrs. E. The Board proved that Horwitz attempted to avoid meetings with Mrs. E., tried to involve the Principal in all such discussions, attempted to avoid entirely any further discussion of a dual set of textbooks, conditioned attendance on a "problem-solving" meeting prior to any other conference with the parent, tried to set specific agendas and meeting times for such meetings, attempted to have a union representative present at parent-teacher conferences, and

other related conduct. A teacher is required to meet with parents at reasonable times, regardless of her personal feelings for the parent. Her refusal to do so with Mrs. E. was unprofessional conduct as alleged.[47]

Alleged Unprofessional Conduct at Staff Meetings and Presentations

The Board discusses the abrupt departure without notice from an October 1998 staff meeting and from the school and her subsequent defiant refusal to respond to Biancalana's inquiry as to its cause and how it should be recorded. It also cites her engaging in other activities while a D.A.R.E. presentation was being made in her classroom and reading during a presentation by a guest speaker. The Board discusses her absence from the music rehearsals in which her class was engaged, although other fifth grade teachers were expected to and did attend. The Board also alleges skipping meetings, one of which, the meeting with Victoria Roche, she had requested. Horwitz also abruptly rescheduled parent conferences which had been scheduled for as much as a month ahead.

Horwitz' inattention during presentations was discourteous, but not otherwise harmful to order and discipline. Her students need not have regarded these episodes as discourteous, but rather as attempts by their busy teacher to utilize her time efficiently. Her absence from music rehearsals similarly seem to have done no harm. Her presence was not required for the students to rehearse, an activity supervised by a music teacher, nor to maintain discipline since two other teachers were in attendance in addition to the music teacher. It does, however, show how

[47] The remaining allegations in this category were either based on hearsay (see Bd. Exh. 66) or otherwise unproved.

she regarded herself as above the ordinary duties expected of other teachers. The abrupt rescheduling of parent meetings shows the same, as do her demands for time for her students in the computer lab to fit her schedule rather than the regular sign-up process for all teachers. The abrupt departure in October 1998 was satisfactorily explained at the hearing; she had a scheduled doctor's appointment that afternoon. What was not satisfactory was her refusal to explain it to her supervisor at the time.

The Audio Tape

The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (FERPA), provides that no federal educational funds may be made available to school districts that have a policy or practice of permitting the release of educational records or personally identifiable information contained in such records in violation of the Act. 20 U.S.C. §1232g Q,)(i). See generally, *Owasso Independent School District I-oil V. Falvo,* 534 U.S. 426, 122 S. Ct. 934 (2002).

Horwitz argues that the tape was not a school student record. She argues that excluded from the definition of such a record are

> writings or other recorded information maintained by an employee or other person at the direction of a school for his or her exclusive use; ... and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to the provisions of this Act. *(105* ILCS 10/2(d))

FERPA's definition of an educational record is similar. 20 U.S.C.
§1232g(a)(4)(B)(i).

The teacher argues that the tape was for her exclusive use. However valid that argument was initially, the tape

became an educational or student school record at least no later than when Horwitz played the tape for two Board members who were not substitute teachers. The Supreme Court in the *Owasso* case wrote that the word "maintain" in FERPA "suggests" that the record must be kept centrally by the District (Scalia, J., concurring in the judgment disagreed with this assertion). While it is not necessary for present purposes to decide if the District was required to "maintain" the audio tape centrally, it was certainly within its rights to acquire the tape and all copies in order to avoid further unauthorized and illegal disclosure.

The teacher argues that Board members were obviously "designated by the school" to receive such disclosures. Again, Horwitz fails to read the entire statute which authorizes disclosure only to "a person designated by the school as a substitute." The Board members to whom this tape was played were not

substitute teachers and no permission from the parents could authorize such disclosure in violation of the statute. FERPA also permits disclosure without parental consent to "other school officials ... who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required." 20 U.S.C. §1232g(1))(1)(A). While other Board members would appear to be school officials, there was no Board resolution which "determined" that they had legitimate educational (as opposed to administrative) interests in this student's record of an IEP meeting. Horwitz wanted them to hear the tape in order to vindicate her position vis-a-vis the administration rather than to determine that Ben's recommended services were inappropriate.

Parents may authorize the disclosure of educational records, but in order to comply with FERPA that authorization must be prior to the disclosure, not subsequent as here. Moreover, the authorization must be specific as to

the reasons for the release and to whom. 20 U.S.C. §1232gO:))(2)(A). It cannot, as here, authorize the teacher to make whatever use she chooses. There was no valid parental authorization for Horwitz' release of the content of the tape.

Horwitz arrogated to herself the role of determining the legitimacy of this and other orders. In support of her alleged right to do so she cites case law to the effect that the legitimacy of a order is a question for the hearing officer to decide in the event of a refusal to comply. She cites, *inter alia, Dusanek V. Hannon, 677*F. 2d 538 (7th Cir. 1982). However, that case dealt with a teacher's constitutional rights to due process and decided that they were not violated when the teacher had the opportunity to question the legitimacy of the order in the dismissal hearing.[48] The general rule is "work now, grieve later," which here means comply now and grieve later. The union contract contained a grievance procedure that Horwitz knew how to utilize. She did not use it to challenge the legitimacy of any of the orders at issue here. Any refusal to comply with an order from superior authority invites a citation for insubordination and is taken at the teacher's peril. The Board's attorneys were of the view that the audio tape was a "student school record" as defined by the School Code and FERPA and that, as such, it had to be retained as a student record, not outside the school. As an employee of the Board, Horwitz was bound by that

---

[48] Neither Dusanek nor Bd. Ed. City of Chicago V. Weed, 281 Ill. App3d 1010, 667 N.E.2d 627 (l996) upon which Horwitz also relies, support the proposition that a teacher may refuse a direct order with impunity. In each case the teacher was given the choice of complying with the order to take leave (in Weed for alleged unfitness) or face immediate dismissal. In each case the court said that where the choice is to comply or face immediate dismissal, the teacher may refuse and defend herself in the subsequent hearing. Neither court held that a teacher may refuse to comply and continue working, although it is raised by the district as a hypothetical situation in Dusanek. 677 F.2d at 543. The court stated that the "assertion is unsupported by the record."

determination in the first instance. The Board's position was reasonable and related to its obligations under both state and federal law.

Horwitz' defense is that the tape may have been material evidence in her lawsuit. That defense is legally insufficient to a charge of insubordination. The tape, if in the custody of the Board, would have been available at trial or in discovery through legal process. Had she feared the Administration's tampering with or destroying the tape or otherwise preventing its availability pursuant to process, she could have sought a protective order from the court to preserve the tape in its original condition.

Although Friede's initial requests were only for copies so that she would not be at a comparative disadvantage in referencing this meeting, after Horwitz made an unauthorized disclosure Sloan unambiguously directed her to return the original tape and all copies. Her refusal constituted both insubordinate and unprofessional conduct.[49] It remains unremedied.

Psychological Testing

Given a basis therefore, a school board may lawfully direct a teacher to submit to a psychiatric examination. *Tetmeir V. Bd. Ed. S.D. 149,* 5 Ill. App. 3d 982, 294 N.E. 2d 380 (1972). With respect to Horwitz' failure to submit to the psychological testing ordered on the recommendation of Dr. Fink, the examining psychiatrist, the teacher argues that the psychiatrist had found her fit for duty and there the matter

[49] The Board also alleges that the disclosure of identifiable student information to former candidates for election to the Board and to a Uniserv Director for the Union constituted a violation of the Student Records Act and FER PA. On April 1,1998 Horwitz sent a memo (Bd. Exh. 28) to Tracy Gordon, the in-school president of the local union, with copies to Sloan, present Board members, candidates for election and John McCluskey, the UniServ Director for IEA. She attached an internal memo from Anita Friede concerning the lack of attendance of Ben B., a student with an IEP, at homework club.

ended. The Board argues that a refusal to submit to psychological tests upon the recommendation of a psychiatrist and the direction of a superior is insubordinate, citing, *inter alia,* this hearing officer's decision *In Re Samuel Brinson* (ISBE, Hearing Officer Rubin, November 20, 1992). The teacher argues that the *Brinson* case is distinguishable on the grounds that there the order came from the Board and not the Superintendent and that in *Brinson* the teacher could not be found fit for duty until the tests were completed, while here Horwitz was declared fit for duty. These are distinctions without a difference. Higher authority is higher authority; if Horwitz' inaction was due to her waiting for the Board to order the examination, there could be no argument that she was refusing Sloan's directive, clearly insubordination.[50] Unless it could be shown that Sloan's directive was arbitrary, she had no right to disobey. As this hearing officer wrote in the *Brinson* case:

> The understood rule in all work environments is that a subordinate must follow any order the performance of which does not entail imminent risk to safety or property. If the subordinate feels that the order is not warranted, he must protest it through the appropriate channels, in this case by filing a grievance pursuant to the collective

bargaining agreement. He cannot decide for himself ... that the order is unlawful. That statement is equally applicable here. Sloan was not acting arbitrarily; he was relying upon the recommendation of a qualified psychiatrist. Compliance with the order did not subject Horwitz to imminent danger. She was required to comply and her refusal was insubordinate.

The fact that Horwitz had been found fit for duty

---

[50] The Board did so order in the Third Notice of Remedial Warning and Horwitz still refused.

may affect the quantum of harm to the District caused by her refusal. Nonetheless, thumbing one's nose at the District's superintendent (or principal or other supervisor) is harmful to order and discipline among the staff.

Refusal to Provide Medical Certificate and Records

A school board may require a physician's certificate either as a basis for pay after an absence of three days or more or "as it may deem necessary in other cases." (105 ILCS 5/24-6)

Not only was Horwitz absent for more than three days in the spring of 1998 and the spring of 1999, the peculiar nature of those absences and of her medical history gave the Superintendent ample basis for requiring a medical certificate. In 1995 Horwitz had provided documentation of a heart condition, then under control, from her cardiologist. A heart condition does not go away; while it may be controlled (see Dr. Mendelson's April 29, 1998 letter, attached to Bd. Exh. 211: currently "asymptomatic"), the Board had a reasonable basis for concern about Horwitz' fitness.

Commencing April 16, 1998 Horwitz suddenly took medical leave of uncertain duration. This medical leave began as the Board was about to convene on April 20 to consider a notice to remedy. Her husband's letter dated April 16 refers to an undescribed ailment of uncertain length. (Bd. Exh. 59) That letter stated that although the results of medical tests had not been received, the cardiologist was able to give the opinion that "a hostile working environment is deleterious and it could exacerbate her heart condition." This letter raised questions about her medical ability to continue working as a teacher, a job that carries certain stresses. Those questions were not resolved when the administrators received reports of her engaging in otherwise routine activities away from school. This would lead one to wonder if her medical condition was related solely to her school duties, and, if so, whether she was medically able to continue. By April 24, Horwitz had allegedly fully recovered from this mysterious

condition.[51] Doubts led to the order for a complete physical examination, including the psychological examination by Dr. Fink.

Mrs. Horwitz argues that Dr. Fink found her fit for duty. Dr. Fink's report

51 The mystery was not answered by Dr. Mendelson's letter which recited negative findings since February.

is more complex than that. While he could not find anything more serious than certain personality traits, such as histrionic behavior, he could not rule out disabling personality disorders without further tests, which the Board ordered and she refused. Not only was that refusal insubordinate, it also gave rise to questions as to whether Mrs. Horwitz had a more serious condition that she was attempting to hide.

Horwitz also refused to account for the sudden half-day absence on March 2, 1999. More questions were legitimately raised about the possibility of sudden attacks, although she was reassuring on that score, claiming that the March 2 absence was for a family member, identity undisclosed, and not for herself.

Horwitz' second prolonged spring medical leave came the day after a stressful meeting on March 15 with her superiors and the Union's Uniserv Director to discuss class observations and further monitoring by her superiors in connection with her impending evaluation. The denials of the three grievances are also dated March 15. The medical necessity for this absence remains a mystery to this day. When Sloan asked for a certificate, Dr. Ciganek gave a meaningless statement to the effect that it was medically necessary. Horwitz directed Dr. Ciganek to consult with Mrs. Horwitz' attorney before responding further. He did so in a letter dated one day before the Board met to discharge Mrs. Horwitz and was forwarded to the Board on the same day as

the Board meeting. That letter contained the same conclusion about a "hostile and stressful environment." However, Dr. Ciganek reported that Mrs. Horwitz was no longer suffering from the "Major Depression" with which she had presented in March. This raised more questions than it answered. How was Mrs. Horwitz able to recover from a major depression in one month? To what extent was she able to withstand the normal stress of teaching without a recurrence of this depression?

The District had a reasonable basis for requiring a medical certificate. Horwitz initially refused and after the doctor's statement ultimately proved meaningless, she refused to authorize a more meaningful certificate. Her medical situation seems more closely related to her legal position than to a recognizable medical condition. Her refusal to authorize a clearer and more specific report was insubordinate and remained unremedied through the close of this hearing.

On April 16, 1999, Sloan wrote Horwitz advising her that Ciganek's first certificate was inadequate. In that letter (Bd. Exh. 269) he also requested the execution of a release of medical records.[52] This request was reiterated on April 29, following Horwitz' termination, as a condition of the release of her

accumulated sick leave pay. (Bd. Exh. 276) The pay was ultimately released to her on May 5. There is no evidence that Horwitz ever authorized release of her medical records. The Board has not alleged the failure to authorize their release as a separate instance of insubordination in its brief.

---

[52] Sloan had previously requested the release of medical records on November 17, 1998, based on Dr. Fink's assessment that they would help in evaluating Horwitz' fitness, specifically the relationship between her emotional and physical conditions.

(see Bd. Brf. 36-40) Nonetheless, it is further evidence that Horwitz was determined to avoid further legitimate examination of her fitness for duty.

Mediation

While ordering someone to submit to mediation is contrary to the voluntary nature of the process, the Board was well within its rights to order a teacher such as Horwitz to engage in a conflict resolution process. Horwitz and the administration, especially Biancalana, had been in a harmful conflict for some time by the spring of 1998, when the initial notice to remedy was issued. Some of the confusion might have been obviated if the Board had directed her to engage in conflict resolution sessions with a designated facilitator instead of referring to it as a "mediation process."(Bd. Exh. 291) Horwitz was a subordinate; she could be ordered to take concrete steps to avoid unnecessarily irritating and aggravating her superiors. Instead, the Board referred to the process as "mediation," implying that the purpose was some kind of a voluntary agreement rather than to correctly understand the nature of the supervisor-employee relationship. If the Board had been clearer in its directive, the nature of Horwitz' refusal would have been clearer also. When, as here, a school district has justification for directing conflict resolution through a specific process, the teacher may not haggle over how it is done. By referring to this as "mediation," an otherwise voluntary process, it left the door open to Horwitz to protest the neutrality of the "mediator."

Horwitz' initial response to the Board's directive to mediate: "I will not and cannot until you investigate" was insubordinate. Although she had legitimate concerns about the impartiality of a "mediator," that was not her initial response. Once her concerns were resolved she did participate in mediation. The initial insubordination was remedied, but her quoted remark and the arrogance implicit in it constituted unprofessional conduct in the extreme. That defiance was not remedied.

DISCUSSION - IRREMEDIABILITY
Insubordination

Horwitz relies on the doctrine that an order must be reasonable and related to the teacher's duties before a charge of insubordination can be brought. The orders upon which the District relies were related to her work. Their

reasonableness is also established.[53]

While refusal to comply with general directives such as "work cooperatively" may in the most general sense be considered insubordinate, it is useful to differentiate that conduct from the refusal to follow a direct and simple order. There were at least four examples of the latter behavior: the refusal to undergo psychological testing, the refusal to authorize a meaningful medical certificate, the refusal to turn in the audio tape recording and the refusal to make the change in Sanae's report card.

In each instance Horwitz decided for herself which orders were "lawful" and which were not. The fact that she may have acted on the advice of counsel is no defense. To the extent that counsel gave advice to act contumaciously, it was bad advice. As has been discussed, the legality of the order is not for the subordinate to determine. Unless the order subjected the employee or others to imminent danger, the order must be obeyed and, if questioned, to raise the question later to an arbitrator or the courts. None of these orders subjected anyone to imminent danger. What is even more curious is that Horwitz did not file a grievance under the collective bargaining agreement over any of these orders. Under the collective bargaining agreement the definition of "grievance" was broad enough to encompass a dispute over working conditions. Instead of submitting the dispute to outside authority, in these instances Horwitz effectively

---

[53] She also asserts that in many cases the insubordination had been remedied. This has already been discussed.

placed herself at the head of the school hierarchy.

Horwitz' entire pattern of conduct was insubordinate. She was disdainful of all authority, not only that of the principal and superintendent, but of the Board as well. Her defiance is replete in all of her responses. Instructions with which she disagreed were always wrong, regardless of the source. Not only were they wrong, they were often the product of a plot to get her. The assertion that the Board would risk harm to the entire fifth grade at Avoca West by assigning her to teach that grade in order to retaliate for an EEOC filing refutes itself. Even the greatest proponents of conspiracies could not see any purpose to such a plot Her sense of proportion was missing. In her mind, Karen Horwitz was the center of the Avoca School District and others were only satellites. Occasionally, she would promise to act cooperatively, but those promises were accompanied by challenges to the legal authority of those placed in superior positions and accusations that she was being singled out on the basis of age or for having exercised her constitutional right to free speech. The right to speak freely is not license to disrupt good order or to harm others. Many of her writings and declarations did such harm.

If discharge is the "capital punishment" of labor relations, insubordination is a capital offense. It ranks with hitting a supervisor in

destroying the discipline and morale necessary to operate any organization. Outside of teacher dismissals, insubordination is a major offense, warranting immediate discharge.[54] The Board here chose to treat this conduct as remediable, not acting upon the initial act, but allowing Horwitz the opportunity to rectify her behavior. Only in the matter of

[54]There is support for the same proposition in teacher dismissal cases in Illinois. Christopherson v. Spring Valley Elementary S.D.., 90 III. App. 3d 460, 413 N.E.2d 199 (1980, stating in advance refusal to accept denial of leave to attend conference and taking unauthorized leave), citing Yuen v. Bd.Ed. S.D. 46, 77 III. App. 2d 353, 222 N.E.2d 570 (1966).

mediating her disputes did Horwitz take the opportunity to remediate her insubordination, and even there it was reluctantly. To her last day of work she remained contumacious of all higher authority, refusing proper orders from her principal, superintendent and the Board itself.

With respect to the more general directives, to avoid conflicts with fellow teachers and to cease making false claims destructive of good order, the Board was in a difficult position. It could issue very specific directives in the nature of "don't do that again," and risk Horwitz' inevitable response that she had not done "that" again, but something distinguishable. Or the Board could issue very general directives and risk the response that they were too vague for her to know how to follow them.[55] Here the Board found a proper balance. It described with particularity the behavior that prompted the warning and then told her to cease behavior of the same kind. These warnings were clear enough for a person of Horwitz' intelligence to have followed, had she been willing.

Unprofessional conduct

Horwitz' evidenced difficulty in acting tactfully with those who made impositions on her time and energy. Her writings indicate a preoccupation with her allegedly delicate health and emotional state. She became angry and acted out against those who might affect that state. She also claimed to have superior knowledge and skills and became angry with those who disagreed. Not only did she become angry; she showed it - sometimes in public.

---

[55] Such a defense is alluded to by the court in Bd. Ed. S.D. 131 v. Ill. State Bd. Educ., 82 Ill.App.3d 820, 403 N.E.2d 277 (1980) in describing the actions of the hearing officer. 82 Ill.App.3d at 824, but is not otherwise discussed or decided. The court's decision rested on the failure of the district to give the teacher the full 45 school day remediation period to which the parties had agreed. It did not concern repeated behavior over the course of years as alleged and proved here.

This inability to handle interpersonal conflicts did not extend to those who supported her or agreed with her. She certainly had her supporters - even fans. The demonstration of support for her in May, 1998 when the rumor was that the Board was not going to allow her to return to teaching showed how popular she was. But her duty was not win a popularity contest; it was to create the best teaching environment that she was able to do. That environment was not just for favored children or parental supporters; it extended to the entire school, colleagues; support staff, parents and students in all the classes.

Horwitz' handling of team conflicts was unprofessional. In her last fourth grade year she allowed the personal affront that she felt on being overlooked for the position of mentor, a position that she felt she had earned and deserved, to affect her interactions with Beaupre and Shafer. As a professional, she was obliged to set aside personal feelings and work cooperatively with the team members, especially since her quarrel was not with them.

Even in the handling of her ongoing conflict with Biancalana and Sloan, Horwitz threw oil on the fire. The administrators were undeniably documenting a case against her, but that was only to be expected given her voluminous body of memoranda on nearly every incident. The administrators' documentation was temperate and moderate in tone. Her response was hysterical. She had no legitimate expectation of continued service when she set herself - and herself alone - against the entire administration of the District.

In her relationships with those who did not agree with her, parents, teachers and administrators, Horwitz exhibited unprofessional behavior as documented herein.

Irremediable Conduct

In *Gilliland V. Bd. Ed. Pleasant View C.S.D. 622, 67* Ill. 2d 143, 365 N.E. 2d 322 (1977), the court upheld the

discharge of a teacher on charges of incompetency, cruelty and negligence. It held that the test of irremediability is whether damage had been done to students, faculty or the school and whether the conduct that caused the damage might have been avoided if the teacher had been properly warned against it. (365 N.E. 2d at 326) It held further that conduct that is remediable initially may become irremediable if repeated over time. (Ibid.) In *Gilliland* the incompetency and cruelty, including corporal punishment, had persisted over four years. The court noted that there had been expert testimony in support of the irremediable nature of the conduct and found that "the combination of a number of causes plus the continuous nature of the conduct were a sufficient basis for a finding of irremediability." Id. at 327, citing *Kallas V. Bd. Ed.* 15 Ill. App. 3d 450, 304 N.E. 2d 527 (1973) and *Glover V. Bd. Ed.,* 21 III. App. 3d 1053, 316 N.E. 2d 534 (1974). Accord, *Bd. Ed.* City *of Chicago V. Harris,* 218 Ill. App. 3d 1017, 578 N.E.2d 1244 (1991). In *Harris,* the court noted some subsequent refinements in the *Gilliland* test. "First, ft has been held that individual acts, separately remediable, may be irremediable when considered in totality; they must have long continued, and a court may consider whether the cause for dismissal is itself irremediable and whether the teacher demonstrated willingness to correct the conduct. Second, criminal conduct has been held to be irremediable *per se* regardless of the test." (578

N.E.2d at 1248, citations omitted)[56] The court in *Harris* found the teacher's refusal to accept a teaching, as opposed to non-teaching, assignment on alleged medical grounds was irremediable despite the fact that the Board had not issued a formal notice to remediate. In overturning a hearing officer's decision to reinstate the teacher, the court found that "[the teacher] persisted [in her refusal] despite many oral and written warnings by the principal and the district superintendent - warnings that referred to the possibility of losing her position if she did not comply." Id. at 1252. Failure

to accept the teaching assignment was deemed harmful even though the District was able to find a capable substitute. Ibid.

Here, as in *Gilliland,* there was expert testimony in support of the irremediable nature of Horwitz' conduct, particularly as to the harm done to the school and the faculty. William R. Hazard, whose credentials were not questioned, so testified. In March 2000 he had submitted a written opinion (Bd. Exh. 199) upon which he expanded at the hearing. In his written opinion Dr. Hazard wrote in part: "Horwitz's persistent denial of her performance shortcomings and her insistence that she knows better than Biancalana is a classic symptom of unhealthy strife." (Bd. Exh. 199, p.2) "Many schools, including Avoca West, deliver their grade-level instruction through teacher teams, which require cooperation, collaboration, and teamwork among the teacher team members. When a teacher refuses to work cooperatively, the instruction delivered to pupils is damaged." Id. at p.3. He also opined that the failure to provide appropriate written lesson plans for substitute teachers was a breach of duty that deprives students of quality instruction to which they are entitled. Id. at p.4. These conclusions are supported by reason, experience and common sense.

Waukegan Public Schools v. Maclin, io6 Ill. App. 3d 156, 435 N.E. 2d 845 (1982), cited by each party, supports Avoca's case:

> [The teacher's] deficiencies were fundamental and of long standing having to do with her own mental discipline and her lack of grasp of her subjects. These deficiencies did not appear suddenly - they existed and were called to her attention as far back as 1977. Moreover, her defensive attitude - founded on her belief that some of criticism against her was racially motivated - created an atmosphere which definitely worked against remediation since she was thereby led to assign the criticism to outside influences she could not control. (435 N.E.2d at 851)

Substitute age prejudice for race prejudice, drop the lack of

subject comprehension, and the court ***could have*** been writing about Horwitz. It upheld the teacher's dismissal and affirmed a circuit court's judgment finding the hearing officer's decision to the contrary against the manifest weight of the evidence. To the same effect is *Kallas V. Bd. Ed. Marshall C. U. S.D. C-2,* 15 Ill. App. 3d 450, 304

[56] In Harris, the Board argued that insubordination was, like criminal conduct, per se irremediable. The court declined to consider the argument, finding instead that the conduct was irremediable under the test of Gilliland and its progeny.

N.E.2d 527 (1973) affirming the finding that the teacher's emotional self-control was insufficient to maintain proper interactions with students, parents and administrators where temperamental outbursts continued over four school years.

The cases cited by Horwitz do not affect these conclusions.[57] *Bd. Ed. Round Lake Area Schools, C. U.S.D. 116 V. State Board (Barbara Cohn)* was merely an affirmation of the findings of the hearing officer as not against the manifest weight of the evidence. The hearing officer had found the school board's actions an impermissible basis for discipline. Its conduct was motivated by anti-union animus and the application of its policy was inconsistent. That is not the case here. In *Szabo V. Bd. Ed. C. C.S.D. 54 (Schaumburg, Ill.),* 117 Ill. App. 3d 869, **454** N.E. 2d 39 (1983), the court found that the teacher's absences *(7* in one year) were remediable and that he had not been given adequate warning. Accordingly, it could not been said the behavior was intentionally and willfully[sic] violative of school policy, distinguishing *Christopherson* and *Yuen,* cited elsewhere herein. 454 N.E.2d at 43. Here Horwitz was clearly warned and her conduct was intentional. In *Bd. Ed. Berwyn S.D. 100 V. Metskas,* 106 Ill. App. 3d 943, 436 N.E. 2d 587 (1982), upon which Horwitz largely relies, the findings of the hearing officer were affirmed, although the court did its own analysis of the facts. The dispute in that case was engendered by the questionable action of the school board in removing an extra $1,000 for rehearsal time from the music teacher's pay for the following year. This gave rise

to what the court described as a flurry of letter writing in protest and the single refusal of the teacher to attend a music rehearsal on Saturday, when state law exempted teachers from performing duties on Saturday. The court thus questioned both the legitimacy of the basis for the order and its remediability.[57] Here Horwitz' letter-writing was not confined to protesting a single questionable action; every action of those who impinged on her time or questioned her conduct or upset her delicate condition was made the subject of a lengthy memorandum, sometimes more than one. This conduct was not limited to a single occasion; it continued over several years, at least from the 1996-97 school year on. Moreover, the legality of the Board's directives here relied upon was not in question to anyone other than Horwitz.

Superintendent Sloan did not initiate dismissal proceedings until Horwitz' behavior in March and April, 1999 mirrored the behavior from the year before which had given rise to warnings and directives to comply, especially as to medical issues. She was suddenly absent without warning beginning on the day after a disciplinary meeting that threatened further monitoring and possibly an unsatisfactory evaluation. To her this represented a "hostile work environment." Her disability did not appear to affect her other life activities, only her duties as a teacher. She left lesson plans - such as they were - for only a couple of days in advance and, as the District noted, did not show any concern

---

[57] Johnson v. Bd. Ed. Decatur S.D.61, 85111. 2d 338,423 N.E.2d 903(1981) dealt only with the question of when a teacher acquires tenure. There is no such question here; Horwitz was a teacher in "continued contractual service." Johnson did not deal with the question of cause for termination of such teachers. Paprocki v. Bd. Ed. McHenry H.S.D.156, 31 Ill. App.3d 112.334 N.E.2d 841(1975) overturned the teacher's dismissal because of the lack of remedial warning notice. No such defect is present here. The court also dismissed parental protests because they were not made to the school district until the date of the teacher's termination. There had been opportunity to respond or remediate.

for her students' progress by contacting the substitutes to go over lesson plans and/or problems with students. She failed to provide medical support for the necessity of her absence until after she was threatened with having her pay cut *off.* Then her doctor provided no medical support for the absence, only an unsubstantiated opinion that there was a medical reason. After renewed declarations that the paychecks were being withheld, Dr. Ciganek expanded on his opinion, stating that Mrs. Horwitz' condition was a major depression. However, without stating any therapy for that condition, and apparently after having consulted with her attorneys, he declared that she was much improved and ready to return to work in a less hostile atmosphere. Horwitz' final act of insubordination was her refusal to sign an authorization to release the medical records which could confirm or refute Dr. Ciganek's convenient opinion. This act epitomized Horwitz' determination that the game was going to be played by her rules; good order and the rule of law were of no concern to her.

Horwitz' actions display a pattern characterized by a combination of hurt and asserted victimization together with claimed superiority, virtuous righteousness and condescension. This is true of virtually every one of her multitudinous writings to the Principal, the Superintendent and the Board. It is rare for Horwitz ever to accept responsibility for something that went wrong. She is either the victim of a conspiracy ("I felt like a character in the movie Gaslight") or the heroine of the plot and frequently both. Had she accepted responsibility and apologized or even asserted that it was a single misunderstanding which would not recur, she might now be heard to assert that the Board is clutching at isolated incidents. Rather her response in each and every case virtually guaranteed that the same conflict would arise again in another guise. She was simply unwilling or unable to accept her status in the hierarchy. Consequently, she engaged in a pattern of insubordination that was irremediable.

There was another aspect of the Horwitz personality

which made her dismissal necessary - her constant need to explain, excuse, condemn and otherwise deflect blame. This was of a piece with her insisting on playing the central role in a drama of which she was actually a minor character. Her prolific memos leave the reader wondering when she had time to attend to her pedagogical duties and how Biancalana in particular had time to attend to her duties to the students and the other teachers. The volume of correspondence, for which Horwitz is responsible since Biancalana had originally unsuccessfully attempted informal and verbal resolutions, is overwhelming, often with two or even three memos in a single day. The distraction which Horwitz caused

required her dismissal in the "interests of the school." (105 ILCS 5/10-22.4) While the District was legally responsible for the education of the children of "high maintenance" parents, it had no such obligation to continue to employ such a "high maintenance" teacher.

The Board did not allege that Horwitz was an incompetent teacher. She seemed to be, and probably was, dedicated to the welfare of the children entrusted to her tutelage. She had high standards and was a tough grader, but many students thrived with that kind of challenge. She was against "crutches" for the students, preferring to concentrate on each child's strengths rather than his disabilities, if any. But her strengths cannot be measured against the harm that she did to other students, some parents, fellow faculty members and the administration, including the Board itself. In the end, Karen Horwitz may well have been, as she claimed to be, an effective teacher - with most of her students. She may well have been, as she claimed, dedicated to her profession. However, teaching in a school, any school, but especially a school such as Avoca West which focuses on a team approach called for a team effort. Karen Horwitz claimed to be a team player, but it was a team only if she could always be the quarterback - and the featured back and the best end. It was her personality -perhaps personality disorder - that made remediation impossible. Her personality

traits were of long standing and persistent, immutable. Her narcissistic focus on her hurt, her feelings, her needs, her demands and her health to the exclusion of all other concerns precluded effective delivery of services to the children by anyone else. There is hardly a letter or memo of hers in this record which does not have "me" at its center. After 23 days of hearing, 5000 pages of testimony and over 500 documents the reader is left numbed to Karen Horwitz' feelings. How much more her colleagues, supervisors and Board members must have been worn out from her demanding that they focus on the star. What Avoca needed was not a single star but a constellation of stars. Karen Horwitz' presence as a teacher precluded that focus. She had to be removed from her position for the sake of the school and its mission to serve children rather than needy adults. Horwitz was probably correct when she accused the administration of treating her differently from other employees; when she demanded individual attention there could be no other response.

Dissent is one thing; it must be tolerated by the Board even if it is highly offensive. Disruption is quite another thing. There are avenues for expressing dissent constructively, especially where, as here, the employees are represented by a union. Horwitz did not make use of the union to further the ends of the staff as a whole. She called upon the union only when she was personally affected and seems not to have been concerned with union affairs unless she was personally involved. Instead, she picked a fight with the local union president. There is no evidence that she took any matter of general applicability to the administration; it was always her own concern. She did not take matters of general concern to the Board; instead, when they did not do as she asked, she

accused the Board of being indifferent. When she went to the press, it was largely on behalf of herself rather than what would be the best governance for the District.

Horwitz' conduct is not susceptible of a 45-day

remediation period or other period of certain duration.[58] The behavior needed to cease immediately. Nor was her conduct susceptible of remediation through the appointment of a master teacher. The assistance that she needed in resolving conflicts was offered. Even in dealing with the demands of Mrs. E, Biancalana attempted to be helpful, although Horwitz did not recognize those efforts as assistance. If any remediation is to be effective, there must be a willingness to change. Here there was none evident.

The allegation by Horwitz that the Board's actions were retaliation for her EEOC charge and subsequent complaint is not an issue here except as it impinges on whether the actions taken against her were justified. The flurry of angry, hurt and accusatory memos appear to have increased after Horwitz went to the EEOC, but adverse intent on the part of the administrators is not demonstrated. They may well have felt that precise documentation of their position was essential now that the EEOC and courts might be examining their conduct. This explanation is as plausible as Horwitz' accusation of harassment, discrimination and retaliation. While the Board bears the burden of proving its charges, it cannot be required to prove the negative, that it was not retaliating. The burden of proving that matter must lie with Mrs. Horwitz. She has failed to show that the attention devoted to her, the great amount of memos and meetings, etc. were for any purpose other than legitimate bureaucratic self-protection.

In an article[59] Julius Menacker, Professor of Policy Studies at the College of Education, University of Illinois at Chicago, discusses a case he decided as a hearing officer that Horwitz asserts is similar to this one, in which the teacher's defiant and reckless accusations were matched by the administration's unreasonable demands to conform. Dr. Menacker concluded that the administration's demands and

---

[58] Where the Board could set a time certain, as in submitting to conflict resolution or the psychiatric examination, it did so.

failure to give her unbiased remediation assistance made the teacher's discharge invalid. Horwitz has cited no court cases supporting this theory of affirmative defense in such cases and Dr. Menacker's decision, which he discussed, is not cited either. Assuming that such an affirmative defense is available in teacher dismissal cases, it has not been made out here. There is only Horwitz' unsupported allegation that the District was imposing unreasonable demands upon her. There is no showing that her assignment to teach fifth grade or to teach science or any of the other matters of

[60] Menacker, *A Dilemma in Teacher Dismissal Hearings: Determining what is Right when Both Sides are Wrong, 93* Ed.Law Rep. 459 (Nov. 3, 1994)

> which she complained were motivated by a wish to "get" her. There is no showing that these assignments would not be given to any other teacher of Horwitz' experience and abilities.

Horwitz' behavior was marked by defiance, legalism, accusations of conspiracies, denial and avoidance of criticism. It is monstrous to believe that the administration would subject Sanae to an awful educational year simply in order to build a case against Horwitz. Yet that is what she asserted on scant evidence, consisting mostly of the parent's desire to have the child in another class and the knowledge that the parent was difficult. Her response with respect to the March **2** half day sick leave was evasive. It is impossible to understand how, if the leave had been legitimate, a direct response would have hurt her position either legally or practically. These are but instances of an overall pattern.

The conduct of Karen Horwitz meets the two-pronged *Gilliland* test. Her actions were harmful primarily to other members of the faculty and to the administration of the school, but they were also harmful to some children, including Sanae, who was made to feel to blame for the differences between her mother and Horwitz, and to those children with special needs whose needs Horwitz tended to

diminish or ignore, and to the parents of those children. Most of all her actions were harmful to morale and to the maintenance of good order and discipline. She was repeatedly warned against this behavior and took no significant action to remedy it. She was defiant to the end. Her conduct was therefore irremediable.

DECISION

The Board has proved by a preponderance of the evidence that the actions charged against Karen Horwitz were insubordinate and unprofessional and that they were irremediable. The Charges preferred against Karen Horwitz are sustained. They constitute grounds for dismissal. The Board's dismissal of Karen Horwitz from continued contractual service is affirmed.

Issued this 29th day of June, 2002.

s/_____
Stephen B. Rubin Hearing Officer
Hearing Officer

Petitioner's Appendix E

PROOF OF RAISING FEDERAL QUESTIONS

Petitioner's Brief to the Circuit Court of the County Department, Chancery Division, Judicial Circuit, Cook County, Illinois, No. 02 CH14237

P. 2 Property interests are protected by the due process clause of the U.S. Cons, 14th Amend., & Ill. Const. Art. I, § II. Officer's skewed interpretation of Code §24-12, and his disregard of the Board's denial of Karen's right to free speech, as it pertained to her essay published on the Internet on 10/15/97, ("Essay") [21], is inherent in Officer's statement that Karen's issues were merely "personal," not professional issues [22]. In fact, the issue was one that very much impacted the public based upon parents' and teachers' testimony at the hearing, which officer cut off numerous times [23,34]. *Hall v. Missouri Highway and Transportation Commission,* 235 F.3d 1065 (8th Cir. Mo. 2000) , and documents [23 & 33] dispute this. "The protection given free speech…by the Federal Constitution was fashioned to assure unfettered interchange of ideas for… political and social changes desired by the people *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

P.3 II Issues. A. Karen's Due Process Rights were Violated. B. Karen's Right to Free Speech was Violated. C. The Hearing Officer Rendered Erroneous Decisions of Law. D. The Decision of the Hearing Officer Was Against the Manifest Weight of the Evidence. E. The Hearing Officer was Biased Against Plaintiff.

The State, therefore, held a hearing based upon an inadequate record which, instead of being grounded on the nature and circumstances of the dispute [28b][61] between Karen and Board, became an opportunity for Board to retaliate against Karen for her exercising her right to free speech, a fundamental aspect of due process. (*Round Lake*, supra) Karen made a presentation of public concerns [30] to Board

1/19/98, requesting relief from the abuse [29a] she was experiencing.

P. 11 Evidence, including VB's false reason for the transfer [146b], illustrates that this transfer was a retaliatory ploy to chill Karen's property rights *McGill v. Board of Education*, 602 F.2d 774 (7th Cir. Ill. 1979). *McGill v. Board of Education*, 602 F.2d 774 (7th Cir. Ill. 1979) Decided. "The court held that retaliation for exercising free speech could take the form of a retaliatory transfer as well as a retaliatory discharge." The Board contrived a remediation plan, that would assure Karen's failing. (*Minooka*, 1992, supra) Officer revealed bias when he stated that it is commendable to ignore public misconduct [147]. Allowing his beliefs to taint the decision opposes Code and is an error of law (*Pickering*, supra), P. 18 "Public school teachers may not constitutionally be compelled, as a condition of retaining their employment, to relinquish the First Amendment rights that they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work," defying our Constitution. *Rankin v. McPherson* 483 U.S. 378 (1987) *Rankin v. McPherson* 483 U.S. 378 (1987)"It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech."). (Add this for reason Rubin had to listen to testimony of public rather than Fink K imagining *Rankin,* 483 U.S. at 388). "We have also determined that speech alleging illegal misconduct by public officials occupies the 'highest rung of First Amendment hierarchy.'"

P.5 Officer erred when he stated Board's actions may be justified against Karen because she filed a lawsuit (*Round Lake*, supra). [69] That finding by Officer is in violation of Karen's Civil Right[s]

P7-10 D. The decision was against the Manifest Weight of the Evidence. Officer erred denying evidence that would

prove Board's charges false [95a]; he was wrong that "picking on" a teacher was permissible or that there was no evidence that it had [95b]. Dorothy Ballantyne, Board President, ("Ballantyne") testified that the Board used its psychiatrist, Fink, to find that Karen was imagining harassment and problems in the district [42a&b][96]. Fink testified that he based his opinion on the Essay without determining if it had a basis in fact. [96a] Officer stated: "And if it turns out that it [the Essay] was authentic in substantial part, that will diminish the doctor's opinion." [96b] But time and again, Officer denied the opportunity to introduce evidence on the defense he admits she needed, to prove her claims authentic [34] [34c]. Officer ignored the testimony of Karen's expert psychiatric witness, Dr. Edger, that Fink's examination was severely flawed [100]. Officer ignored the testimony of Karen's psychiatrist Ciganek [98], and stated that Ciganek didn't have the facts about what occurred at Avoca [100a], therefore, his opinion had no credibility. Following that logic, Fink did not have the facts either yet Officer accepted Fink's testimony. A diagnosis of paranoia could not be credible unless an investigation proved charges of harassment false. Officer, though, denied such evidence and further erred when he blocked any testimony contradicting Fink [100b]. (*Round Lake*, supra) Officer also omitted any mention of the Board's unlawful denial in choosing an unbiased psychiatrist. *Tetmeir v. BOE S.D.* 149, 5 Ill. App. 3d 982, 284 N.E. 2d 380 (1972), [101] Karen's medical release form [102], was very limited, yet Fink gave information to Board in violation of this release. "One's physical health and medical condition are among the most intimate and personal aspects of one's life. Our court has specifically held that the right to privacy regarding such matters is a fundamental right." *Doris Burger, v. Lutheran General Hosptial et al,* 198 Ill. 2d 21; 759 N.E.2d 533 (2001). Fink admitted he was biased and based his decision strictly on Board evidence and did not review documentation provided by Karen [102a]. Officer ignored the Board's bogus reasons for conducting a fitness for duty test [103] that violated [FMLA 29 C.F.R. 825.310(a)&(c)] Officer also ignored the Board's cruelty towards Karen, in requiring such

intrusive medical exams in that it was retaliatory, discriminatory and too intrusive an exam under the circumstances [103]. Such improper intent of Board was apparent in that Board allowed Karen in the classroom for months from the date of the exam (7/24/98) without the alleged vital report from the doctor, showing the intent to be strictly retaliatory [126]. Furthermore, Officer incorrectly stated that Karen had retaliated against child E. [104] In spite of the stress that this parent had caused [104a], and Mrs. E's prejudiced attitude [104b], Karen gave this student coveted positions in class, such as Editor-in-Chief of the class newspaper[161b], and an outstanding report card. (Karen determined student E deserved an X ("needs improvement") for being tardy 27 out of 60 days, a fact administrators ignored [105]. Officer admitted that Karen was a no-nonsense teacher, which explains Karen's adherence to proper grades [106]. VB accused Karen of changing student E's report card mark in Student Regulations to an X after a meeting with Mrs. E on 11/23/98 [107], but the document Karen presented to the parent at that meeting [108] and the first run report card clearly show that Karen had given a negative mark to this child from the start of the grading period; it was never changed. No reasonable person would think a strict teacher would ever rate 27 "tardies" as satisfactory. Mrs. E's letter [109] demanding that Karen change the X, substantiates the X was conveyed to her, yet VB insisted Karen had never given her an X. Officer overlooked VB's deceitful actions. Instead, Officer determined that VB was reasonable and Karen had a personality problem [110]. *BOE of School District #131v. ISBE* et al, 82 Ill.App. 3d 820; 403 N.E.2d 277 (1980) Additionally, Officer continually overlooked false testimony [110a]. Karen submitted lesson plans through 3/23/99 that she copied and mailed to herself so she could prove that she had left lesson plans if she was not in school the next Monday due to her health. Board stipulated that the envelope was indeed mailed on 3/12/99. Officer watched as over a week's worth of lesson plans appeared from within the sealed envelope [111]. Yet, the next day, VB testified there were no plans [112]; and Officer decided there were only a few

days. Officer ignored VB's display of arrogance for the law and the implications this has for VB's character, since he appeared to share the belief that higher authority gives one the power to rearrange the truth. This belief contradicts Code and thus resulted in injustice for Karen. (Id) Exhibit [113] shows another sequence of events in which the administration violated Karen's rights per Contract [CBA §5.10.2][114], in withholding a parental complaint [115] [116]. Board revealed its unscrupulous agenda when it submitted an altered letter ("Altered Letter") into evidence [118]. Officer's obstruction of Karen's cross-examination of Ballantyne about the Altered Letter violated §24-12. [119] The missing sentence in the Altered Letter documents Karen's assertions regarding Supt's agenda and states as follows: "Throughout the years, past experience has shown that what the parents want and what the children need is not important....it is what Dr. Sloan [Superintendent] wants is what goes." The Board and Officer were wrong to assume that administration was honest [120]. See Board witnesses lies[120a] proof [120b] . Supt.'s abuses of power were legendary at Avoca [121]. Officer accepted Board's claim that Altered Letter was the only copy they had [122] even after Karen produced the authentic version with the additional sentence, which he refused, acting as if the letters were identical [123a], over Karen's objections [122a]. Officer disregarded other clear signs of a political vendetta against Karen. (Id) "The hearing officer is required to render a decision based on the 'relevancy and materiality of the evidence offered. ' " (*Spangler,* supra) Officer ignored the relevancy of the Altered Document, and allowed false testimony and Contract violations, violating statute [23 Ill. Admin. Code Sec. 51.60(d)(2) (1996)], and determined it was monstrous suggest that the Board would lie or do something harmful to children [124]. Officer's actions ignore Karen's evidence regarding pleas to the Board asking them to investigate their administrators [50]. Tuttle justifies lying [124a]. Why would the Board unlawfully remove a sentence from a document other than to cover for Supt.? A board has a duty to stop bullying so children have a proper education; yet Board bully Karen which compromised her students'

education [4]. (Davis , supra ,Brown, supra) Officer minimized VB's refusal to help Karen [126b], a primary responsibility of an administrator; and Board's denial of Karen's request for an impartial evaluator or a videotape of her evaluations (*DeOlivieria* , supra); was callous considering other teachers had protested VB's cruel ways [127a] [4]. Officer opined that Karen's alleged personality disorder was long standing, yet admitted Fink's testimony should have been stricken [128]. Officer applied a double standard when he denied Karen's request to keep everything on the record when she went home ill, but allowed Board to determine what went on the Record; Officer allowed Supt. to take part in a discussion with Officer without Karen [128a]. Officer made numerous mistakes of law which amounted to a deprivation of Karen' right to due process and a fair hearing.

P. 14 Exhibit [168a] shows the nearly identical evaluations of Haste and Karen; Karen, who filed an EEOC charge, was ordered to write a goal. Exhibit [168b] Haste was not. Board sat idly by aware that Karen's desperate requests for protection of her due process and 1rst Amendment rights would make her appear as the troublemaker; Officer labeled Karen's requests as "neediness" and reasons to terminate her [169]. The intention of our legislatures was that a hearing was the opportunity to prove charges false.

Circuit Court, Judge O'Brien Memorandum Opinion (Appendix C)

P.4 Thus with respect to plaintiff's free speech rights, an identical cause of action has been previously litigated between the same parties as in the administrative review action and a final judgment rendered and it is res judicata.

Circuit Court, Judge Agran Memorandum Opinion (Appendix C)

P.1 Plaintiff Horwitz further contends that she was remediated in that she refrained from using disrespectful

terminology against her superiors and followed these orders until after she was terminated.

While plaintiff Horwitz has not stated it directly, her argument in essence is directed to the court's misapplication of existing law.

P.3 Further, plaintiff also contends that because she was ordered to refrain from using terminology against her superiors and that she did refrain until after she was terminated that she was remediate. (Motion pg.7) The test for irremediability is; 1)whether the damage has been done to the students, faculty, or school and; 2) whether the conduct resulting in damage could have been corrected had the teacher's superiors warned her. Gilliland v. Board of Education of Pleasant View Consol Sch. Dist. No. 622 of Tazewell County; 67 Ill.2d 143 (1977). Conduct which originally was remedial in nature, can become irremediable if continued over a long period of time. *DeOliveira v. State Board of Eduction* [sic], 158 IllApp.33d 353 (2nd Dist., 1987). Intentional insubordination provides cause to determine conduct irremediable because "once the willful violation has occurred the damage has been done". Yuen v Board of Education, 77 Ill.App.33d 353 (2nd Dist., 1996). The evidence presented in the record indicates insubordinate conduct on the part of plaintiff Horwitz which was damaging to the school. (See O'Brien memorandum Opinion pgs. 5-6). Further, the conduct continued over a long period of time and inflicted damaged [sic] on the school and was therefore irremediable. (See O'Brien memorandum Opinion pgs. 5-7) A teacher's conduct which exists despite many oral and written warnings by the administration may become irremediable. See *Board of Education of the City of Chicago.*

Petitioner's Brief to the Appellate Court No.04-1640

P.5-6 when the only communication of problems in the record started 4/20/98, [V.24 R C6148-51], with 3 remediations that followed Plaintiff's EEOC charge [V.37 R C9127], essay placed on the Internet on 10/14/97, ("Essay")

[A-214-217] and presentation to the Board, [A-95-99][V.27 R C6653-[illegible]3 R C6875] asking it to control the administrators who were harming students and teachers. *McClain*, 1026 (Misleading evaluations are not permissible). The Board's expert witness, Dr. Hazard, testified to 1½ years of disruptive behavior, not 6 years [V.11R C2586L21-24]; Super. admits 1½ years also [V.29R C7208]. Plaintiff was terminated 4/23/99 exactly 1½ years after the Essay. Officer opined that Plaintiff was the disruptive element [A-84]; the record shows that disruption was contrived by the Board [V.14R C3421L13-24],[V.11R C2502 L4-24], due to Plaintiff's lawsuit [V.14 R C3370 L15-C3371L8], a protected act. Super. distorted 1½ years into six, impeachable testimony that Officer should have been noted. (*Bd. of Educ. of Chicago v. State Bd of Educ.*, 113 Ill.2d 173,196, 197(1986) ("Chicago"),(signs of cover up are relevant).

P.11 More important, Harris,1028, [Bd. of Educ. of City of Chicago v. Harris, 218 Ill.App.3d 1017, (1991)], says that Harris had the opportunity to show subterfuge, but failed. **Plaintiff had no opportunity to show the Board's duplicitous agenda.** Plaintiff, having gone through this process where Officer irrefutably denied Plaintiff the right to a defense that showed the subterfuge, [A-245(L6)-247(L12)], after which Officer misrepresented the facts, and feigned that he had allowed this defense when he falsely swore that it was Plaintiff's failure to present the Board's devious actions, argues that Harris most likely had no opportunity to show subterfuge either. Harris' appellate argument should have focused on this deceit, had it occurred in her case as it did in Plaintiff's, so her case could not stand to harm another teacher. An officer's unconscionable blocking of a defense and then finding against the teacher for failing to present the very defense she was denied, desecrates the tenets of due process. Hazelton, 351 (findings must be based on record) Plaintiff intends to take this case to the highest court, so that either a path of justice will be carved, or truth will be known to warn other teachers who want to protect children that the Constitution does not protect teachers who expose misconduct. Plaintiff is dedicated to making sure that this

case will not be another Harris case to use against future teachers.

P.16 He erred again finding Dusanek v. Hannon, 677 F.2d 538, 543 (1982) unrelated to this case [A-79]. Plaintiff argued that her hearing was unconstitutional since Plaintiff did not have the rights the Dusanek court held for a dismissal hearing, or the opportunity to question the legitimacy of the order. Officer refused to consider that retaliation could be constitutional deprivation, and thus did not grasp the similarity to Weed, nor to the Dusanek ruling. (Ashcraft, 940, Diamond Mortg.Corp. of Illinois v. Armstrong, 176 Ill.App. 3d 64,69,70 (1988), Franz v. Edgar, 133 Ill.App.3d 513, 520, (1985) (unfair not due process) The court's interpretation of Code, in the present case, violates due process since it conned Plaintiff into losing her property rights by not providing fair warning. Any reasonable citizen would read Code, "a termination cannot be political or capricious," and be confident that she would have an opportunity to use an affirmative defense to prove that the charges against her were political and capricious. Officer's construction of Code is an unconstitutional trap. (Peoria Police v. Bd. of Fire and Police Com'rs, 215 Ill.App.3d 278, 281 (1991) (all statutory requirements are owed plaintiff) (People v Bossie,108 Ill.2d 236,240 (1985), Grayned v. City of Rockford, 408 U.S. 104, 108, (1972) (Man must be free to steer between lawful and unlawful conduct.) The circuit court's standard disregards Code. (Buchna v. ISBE, 342 Ill. App.3d 934,938 (2003) (cannot sanction disregard for Code) (McClain, 1026 (misleading evaluations that circumvent Code are not permissible) Reinhardt v. Board of Education, 19 Ill.App.3d 481,483,484 (1974) citing Waller v. Bd of Ed, 13 Ill.App.3d 1056: "' We consider the right of a teacher to be informed about the causes that are remediable and to have an opportunity to correct such causes as extremely important and one that goes to the heart of the tenure system. We do not believe that a record which fails to show that the board took proper cognizance of this provision is sufficient.'"

P.17-18 Code mandated that the Board advise Plaintiff, via her evaluations, of her alleged decline so she could remediate and maintain her job. It was logical that Plaintiff, knowing that Supt. had threatened to make her life miserable and had intimidated any teacher who dared to challenge his arbitrary authority, could rely on her evaluations, a hearing before an impartial officer, and testimony from colleagues about the discrimination and abuse occurring at Avoca, to defend herself against bogus charges. Excellent evaluations do not serve as a warning and boards cannot substitute sham remediations for evaluations. (Buchna, 938 (cannot sanction disregard Code) The Board had a duty to accurately convey Plaintiff's standing with the district. (Greer, 505,506 (evidence contrary to record is arbitrary) Plaintiff's witnesses were not allowed to present any evidence that showed the Board's duplicity, thus Defendant Board's argument that Board member Hickey did not speak of corruption, nor the author of the forged letter was not asked questions about the altering of her letter is meritless; Defendants have yet to argue that Officer was correct to disallow Plaintiff an affirmative defense. The circuit court erred in deciding that Officer can bar Plaintiff's defense, and then decide against her for not doing what he barred her from doing. Officer held: "The burden of proving that matter [retaliation] must lie with Mrs. Horwitz. She has failed to show that the attention devoted to her, the great amount of memos and meetings, etc. were for any purpose other than legitimate bureaucratic self-protection," [A-91]. The court's finding that Officer's barring of Plaintiff's defense and then holding Plaintiff responsible for not offering that barred defense complies with Code's guarantee for an impartial hearing is shocking, since his act overcomes the presumption of trust. An authority that engineers the outcome as Officer did is well beyond biased.

P.24 Officer was wrong to refuse to hear the truth of this matter in question when the outcome for Plaintiff means a loss of her property rights and her good name. Without the right to prove that defendants are party to a cover up, it is a serious violation of Plaintiff's due process rights as well as an erosion of the Constitution. Six Brothers, 982

P.23-27 Any reasonable person would agree that Officer's conclusion that he need not consider Plaintiff's affirmative defense when he had evidence that Plaintiff was engaged in litigation with the Board [A-308], is against the manifest weight of the evidence, since it is against reason. (Round Lake, 110,111 (courts must assess whether a rule infringes upon protected rights) In CHA v. Human Rights Com & Lasko, 321 Ill.App. 3d 1115, 1126 (2001) Lasko had only to present indirect evidence of retaliation to have a hearing that dealt with his wrongful discharge. Plaintiff presented direct evidence [A-161(L10)-162(L16)],[A-210-211],[A-178-187],[V.35 R C8670-1 [V.39 R C9721L1-9722L18]. A typical example of VB's outrageous lying: [A-284-287] is a letter written by Mrs. E protesting the "X" Plaintiff had told her was on her E's report card during the 11/23/98 meeting; the date is noted by Mrs. E. VB testified [V.8 R C1933 L10-1936 L24] that Plaintiff never said "X' at this meeting, when the parent's letter is arguing against the "X" she was told about at that meeting. Considering that the "X" refers to 27 late arrivals in 60 days, and Plaintiff presented data, [A-288], at the 11/2398 meeting documenting that tardiness, based on a school rule [A-289] earned a negative mark, VB's testimony was false and violated Code. (Round Lake, 107,108 (teacher cannot be subjected to confused set of rules). VB ordered Plaintiff to change the X to a slash, which means satisfactory when Plaintiff believed being tardy nearly 50% of the time, and breaking a rule, needed improvement. Officer ignored VB's false swearing since her wrongs were not relevant [A-245(L6)-247(L12)]. The record would have been replete with proof the Board was engaged in a cover-up had Plaintiff been allowed her affirmative defense. [A-245(L6)-247(L12)],[A-121(L14)-A-123(L19)],[A-136(L8)-A137(L18)],[A-138(L8)-A-139(L19)] [A-140(L12)-A-144(L6)]. What made the record, in spite of Officer's effort to keep it out, was ignored or spun.

It is settled that an administrative hearing is to determine the truth, not to line one side up against another to prove the teacher wrong. Fairness should prevail. Gigger, 439 "It

should never appear, as it does in this case, that the procedure was aimed primarily at proving the guilt of the plaintiff." (Balmoral Racing Club v. Illinois Racing Board, 151 Ill.2d 367, 410,411 (1992) (one sided arguments are not acceptable) Six Brothers v. Depart. of Rev., 192 Ill.PP.3D 976, 983(1989) "Hearings are not meant to be partisan, with the agency pitted against the individual." The case at bar compels the same description as Diamond, 70: "intrinsic unfairness of the proceedings is obvious." The defendant in Diamond found herself in court for an entirely different hearing than anticipated. Plaintiff initiated a hearing believing that she could rely on Code and that she could show how the Board had violated her due process rights, shamefully harassed her, and trumped up charges, yet was not allowed that opportunity. The circuit court erred when it found the biased nature of this procedure acceptable. Officer's was wrong to refuse to hear the truth of this matter in question when the outcome for Plaintiff means a loss of her property rights and her good name. Without the right to prove that defendants are party to a cover up, it is a serious violation of Plaintiff's due process rights as well as an erosion of the Constitution. Six Brothers, 982 The missing lines in Forgery #1 constitute a lack of credibility on the part of the Board both in terms of their content and the mysterious way in which they disappeared. (See Argument No. V.) Fairness and protection of Plaintiff's due process rights has not taken place in this process. (Six Brothers, 982 (duty to provide meaningful hearing)

Officer wrongly held Plaintiff negligent in her "refusal" to turn to the union [A-79][A-84]. Officer was clearly told that Plaintiff's issues did not qualify for union support [A-145(L19)-A-146 (L13)]. Furthermore, the record shows that the union president, Gordon, publicly attacked Plaintiff, [V.38 R C9384], [A-],[A-213],[A-308],[A-138(L8)-A-139(L19)], [V.10 2435 L16-2436 L8], a fact suggesting that Gordon defamed Plaintiff to keep her job, especially coupled with McCluskey's testimony that teachers were frightened, [A-240{L11)-244(L23)], and evidence that harassment occurred at Avoca [A-212]. Officer blamed Plaintiff for

"picking a fight" with Gordon, [A-90], who had defamed Plaintiff first [V.38 R C9384],[A-213],[A-196(L14)-197(L14)]. Officer ignored or sustained material evidence, and also initiated an objection for the board, when McCluskey said that Supt. had intimidated Plaintiff's teammate Haste, [A-178-182], so she would not testify [V.15 R C3518 L5-18;R C3682 L15- 3683 L1]. Chicago,197 held that it is well established that intimidating a witness is a sign of guilt; relevant evidence must be properly examined. (Cumulative mistakes show bias.) Greer, 496,497)

Officer also erred as a matter of law when he refused to hear anything about how the Board was discriminating against Plaintiff [A-124(L13)A-128(L24)], [A-134(L5)- A-135(L8)],[A-187]. (Greer, 505,506 (Discrimination is a sign of pretext.) (Colquitt, 865, (courts must protect against vindictive witnesses) Officer violated Plaintiff's 14th Amendment right for equal protection. Gosney v. Sonora Independent School Dist. 603 F.2d 522, 528 (1979) "This circuit has firmly established that a public education system may not single out an instructor... for 'the imposition of restrictions which are not applicable to others similarly situated.' " Gosney, 527. Lee v City of Peoria, 685 F.2d 196, 201(1982) held that Lee's claim of discrimination was properly before the state court and was necessary to the state court's determination. Lee, 201, 202 held that the plaintiff lost his rights since he failed to assert discrimination in the hearing before the Board; it is pertinent to the case at bar, since this case directly conflicts with the Lee court's finding in that the circuit court supported Officer's not allowing Plaintiff to assert her discrimination defense at her hearing. If both cases stand, plaintiffs are denied their constitutional rights bringing up or not bringing up discrimination. (Grayned,108, (Man must be free to steer between lawful and unlawful conduct.) The Board had a duty to assist, Siemion v. Department of Public Aid, 168 Ill.App.3d 187,196 (1988), but instead set Plaintiff up to fail [A-187-195]. At [V.39 R C9721L1-9722L18], a parent testifies how Plaintiff behaved professionally, while VB was diminishing Plaintiff at a meeting. Officer, who mentioned Plaintiff's defense

throughout his Decision, was fully aware of Plaintiff's claim that the Board was orchestrating her failure, but still failed to consider evidence fairly. Kaufman v. Bd. of Trustees, Com. College, 552 F.Supp.1143, 1154 (1982) found that enforcement of a rule in that case was too haphazard to meet constitutional requirements. Officer denied an opportunity to show haphazard enforcement (A-124-L13-A-128-L24), [A-134(L5)- A-135(L8)] yet opin d that Plaintiff had equal treatment, something he could not know [A-75]. (See p.24 this document) Village of Willowbrook v Olech, 528 US 562,564 (2000) held that the 14th Amendment is " 'to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution' " The court erred in ruling that the manifest weight of the evidence supported the Board's charges since the "weight" was based on Officer's narrowing of the evidence as well as his false representations of the record not on what should have been in the record nor what was in the record. (Hazelton, 351 (lack of evidence of a substantial nature results in a decision against the manifest weight) The standard proffered by Defendants, or that a decision stands if there is anything on the record to support it, is improper, since in this case, having left out Plaintiff's defense, the record was insufficient to have made any kind of fair decision. It is not determined if the "anything" is true. (Six Brothers, 982, Regents, 570 (right to a meaningful hearing to protect property and liberty rights)

P.49-53 Whether the Board retaliated against Plaintiff due to Plaintiff's speech is not the same cause of action of whether speech is cause to fire under Code [V.34 R C8495]. Gannon, et al, v. Daley, et al., 531 F.Supp. 287, 290(1981) held "If the cause of action asserted in this case could not have been litigated in Shakman, then it cannot be precluded by Shakman." This court can substitute Horwitz for Shakman and arrive at the same ruling since Horwitz could not have litigated cause or irremediability. In the case at bar, Plaintiff argues that Board silenced and immobilized Plaintiff from

protecting her property rights by issuing orders that resulted in sham charges to discredit and dispose of her. It then unlawfully labeled damage the Board stirred up and used its power over the staff and ability to make false charges to connect it to Plaintiff to prove irremediability to satisfy Code. Officer, whose duty it was to judge credibility and apply the law, unjustly ignored and barred testimony on the Board's obvious ploy and violated Plaintiff's 1st Amendment rights. (Chicago, 196,197,(cover-up is relevant.) Schools must cope with the outcome of protected speech, and Plaintiff's speech should have been protected. (Rankin,388; Knapp,1270; (misconduct of public officials, the highest order of speech.) No court can use damage resulting from Plaintiff's protected speech, or lawsuit, [V.37 RC9046L22-9047L3],[V.37 R C9048 L16-9049 L5] when either the Board or lawsuit, another protected activity, caused the alleged damage. [V.37 RC9043 L13-24],[V.37 R C9044 L4-24],[V.37 R C9052 L2-24],[V.37 R C9026 L18-9027 L16] The record shows Officer helping the Board by saying that Pres. had not testified that the lawsuit had caused the damage to the district [V.14 R C3448 L14-3449 L5], when Pres. had stated that it did [V.14 R C3370 L15-3371L8] only minutes earlier. Once again, the record shows a pattern of Officer aiding the Board. (*Greer*,496,497 (abuse of discretion sets aside an administrative action).

In the present case, the 1st Amendment charges pertain to denial of protection that Code guarantees teachers, an issue that is outside the federal court's jurisdiction. In Horwitz, the question for the federal court was: Did the Board retaliate against Plaintiff for speaking out? The federal court did not and could not decide that Plaintiff's speech was cause for dismissal or that the Board used the speech to create a disruption to invent bogus cause. The Horwitz, 618,619, court assumed Plaintiff's speech was protected unlike Officer, not a party to Horwitz, who decided Plaintiff's speech was cause for termination with no examination warranted. The federal court ruled on evidence of retaliation for speech, while Officer had a duty to decide whether the conflict between the Board and Plaintiff involved any

violations of Plaintiff's rights, including, but not limited to, 1st Amendment rights as well as whether any speech rose to cause. Officer decided that Plaintiff did not have a right to call her superiors untruthful without hearing the truth, contradicting his accurate, but not honored, statement that speech must be proportionate to the situation, [A-247(L1-6)],[A-121(L14)-123(L19)]. Pickering, 563,564 Powers v. Archnid, Inc., 248 Ill.App.3d 134, 139, 140 (1993), a case on point, held that the plaintiff was correct in using the Mitchell Court's finding in his defense since different evidence was needed to arrive at findings in his present case, which bars the application of res judicata. Plaintiff argues similarly that the meaning of "cause" was not an essential element of Horwitz. The present case is a different cause of action. (Gittings v. Hilton,124 Ill.App.3d 594, 596 (1984), Crum & Forster v. Resolution Trust Corp., 156 Ill.2d 384, 397 (1993)(cause of action have different rights) (No. Ill. Medical Center v. Home State Bank, 136 Ill.App.3d 129, 144 (1985)(new facts establish new basis for claims.) This case must be distinguished from River Park v. City of Highland Park, 184 Ill.2d 290, 302(1998), which held that the bar extends to what was and what could have been decided in the previous suit. Code guarantees procedural due process rights for tenured teachers, not just substantive due process. Applying the transactional analysis as did the River Park, 317, court, it remains that in this case it is well settled that the federal court does not have jurisdiction to make findings concerning Code. Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 261, 257 (1994) held that when a state-law claim depends on an interpretation of a statute, in this case Code, it cannot be preempted by a federal court. Gannon, 290 held that it is well established that states must protect property. (Lewis, 1023,1024, (property rights stem from the state.) Vargas-Harrison v. Racine USD, 272 F.3d 964 (7th Cir. 2001) is directly on point saying that the district court's dismissal of a 1st Amendment case does not moot a procedural due process claim since property rights must be guaranteed. (Regents, 570 (property rights guaranteed)

Even if cause could have been decided in Horwitz, which Plaintiff denies, Best Coin-op v. Paul F. Ilg Supply Co.,189 Ill.App.3d 638, 650 (1989) held that since a cause of action is a right belonging a party, which in this case is Plaintiff's undisputed property right, parties raising res judicata "must show with certainty the parties, the precise issues, and the judgment of the former action." (Best Coin, 650, No. Ill., 145, River Park, 302,) (identity of parties vital). Like Saffold Enterprises v. Concept 1, Inc. 316 Ill. App. 3d 993,996-998 (2000), this case is not barred by res judicata because the identity of parties element has not been met. Officer was not a party in Horwitz. On 5/25/04, Defendant ISBE swore that the ISBE was totally independent from the Board. [V. 42 TR 101 L8-18]. The circuit court categorically erred in applying res judicata with a new party. Universal Sec. Ins. Co. v. Koefoed, 775 F.Supp. 240, 244, (N.D.Ill. 1991) says: "The 7th Circuit has indicated that it does not believe that substantive due process protects a state-created property interest." Code ensures a full defense including issues of speech and retaliation being heard with procedural due process. Thus, any speech violations subsequent to Horwitz, including violations at Plaintiff's hearing are subject to due process. (*Regents*, 570 (state guarantees property rights) *Gittings*, 596, held, "If we were to accept the defense construction of res judicata, then all questions and disputes concerning the rights of the parties relating to the easement, even those future question arising as a result of changed circumstances would be foreclosed from judicial resolution. That cannot be." Tenure is strictly construed. Reinhardt 1974, 483,484 Plaintiff should be in no worse position than the plaintiff in Nowak v. St. Rita High School, 197 Ill. 2d 381,393, (2000) or in Van Milligan v. Bd of Fire & Police Com'rs, 158 Ill.2d, 94,95 (1994). Had Plaintiff sought reinstatement in Horwitz, her claim would have been dismissed for lack of jurisdiction as per Nowak. In Supplement to Motion to Reconsider, Plaintiff cited Nowak, which specifically discusses River Park and its lack of application to teacher tenure rights. The circuit court erred when it did not reconsider its incorrect ruling barring Plaintiff's 1st Amendment rights [A-9-16] and continued to

use Plaintiff's unexamined speech as cause in its 5/5/04 Memorandum Opinion [A-19-23]. Van Milligan lost before a jury trial in federal court, unlike Plaintiff whose complaint regarding 1st Amendment issues was dismissed with no opportunity for even a deposition. Yet, the Van Milligan, 96,97, Court held that the plaintiff had the right to have his case "fully and fairly litigated in a new disciplinary hearing where he will be permitted a full opportunity to offer evidence in response to the disciplinary charges lodged against him." Further, the Illinois Supreme Court decided to reverse the appellate and circuit courts and remand Van Milligan to the police board for further proceedings in spite of holding that, "Based upon that review, we cannot say that the police board's decision was against the manifest weight of the evidence." Both the 10/30/04 [A-7-14] and 5/5/04 [A-19-23] opinions of the circuit court incorrectly focused on the rights of Officer; they should have focused on Code and the Constitution as did the Van Milligan court. (Best Coin, 660 (res judicata not to be technically applied when it produces unjust results)

If res judicata stands in this case, it opens the door for federal courts to eliminate procedural due process property rights and to circumvent the 1st Amendment. Three landmark cases Regents, (1974), Pickering,(1968), and (Shelton *v. Tucker,* 364 U.S. 479, 487(1960), (protected speech even more essential for teachers), guarantee property rights and the right to free speech. The circuit court's ruling directly conflicts with theses cases, which hold that no government employee can lose his job without an examination of his speech, particularly no teacher. Res judicata is not intended to mimic double jeopardy or to score a victory for violators of the 1st Amendment who manage to prevail in one court. It is not a tool for the government to get away with 1st Amendment trespasses, or a way to silence Plaintiff forever more, after they managed to suppress speech. (Gittings, 596 (a cause of action has rights) Defendants are manipulating a doctrine intended for judicial economy and using it as a sword to deny Plaintiff her constitutional rights. (Nowak, 393 (teacher tenure rights are state rights). Defendants have

benefited from misapplied law partially due to the enormous size of this record. Plaintiff prays that this court correct these mistakes to uphold the right of free speech.

App. Ct. Opinion (Appendix B)

P.1 On appeal, Horwitz argues that 1) she was denied due process because the administrative proceedings were "arbitrary," that the Board and the circuit court erred in applying the doctrine of res judicata to prevent her from presenting arguments that her termination was improperly based on actions that were protected by the First Amendment, that the State Board's decision is void because the Hearing Officer submitted his order outside of the time provided by statute, and that the circuit court erred by not considering her arguments that two exhibits used at the hearing were "altered" or "forged," and that the circuit court ought to have issued sanctions and found defendants in contempt of court. Aside from these procedural rulings, Horwitz argues that 2) the charges against her were insufficient cause for dismissal and that the Board's finding that she engaged in irremediable misconduct was against the manifest weight of the evidence.

P.13 Horwitz saw herself as a "champion" for her students and as a "leader against the alleged fight over age discrimination."

P.30 Further, the record belies Horwitz's claims that she was dismissed for "arbitrary," "capricious," "political," or "discriminatory" reasons. While we need not discuss every single charge levied against Horwitz, we find that the evidence presented against Horwitz at the hearing was sufficient to support the charges of insubordination, which is a valid ground for termination. We now turn to that evidence...

P.37 She also argues that because the Heating Officer and the State Board of Education are parties to the state-court action, the identity of the parties in the federal suit and the state suit

are different, thus resjudicata should not bar her claim. We need not, however, address the merits of this issue. Even if we were to agree with Horwitz that resjudicata should not bar her claims concerning her exercise of free speech, there is other evidence, completely separate from her purportedly protected speech, sufficient to support the Hearing Officer's ruling. Thus, we decline to address this issue.

Petitioner's Petition to the Illinois Supreme Court

P.1 The First District's Judgment Directly Conflicts with the United States Supreme Court Ruling in *Burlington Northern v. White*, ___U.S.___(No.05-259), Decided June 22, 2006, and in *Hinthorn v. Roland's of Bloomington, Inc.*, 119 Ill. 2d 526,529 (1988)(retaliatory discharge violates public policy) by Allowing Insufficient Process to Verify If a Retaliatory Discharge Had Occurred.

P.3 The First District's Judgment Directly Conflicts with Petitioner's Due Process Rights Under the Fourteenth Amendment Since It Frustrates Legislative Intent.

P.5 The First District's Judgment Conflicts with Rankin *v. McPherson* 483 U.S. 378 (1987), and *Board of Regents*, 408 U.S. 564 (1972), which Stand for an Employee's Right to Free Speech.

P.4 The First District's Judgment Denies Teachers a Right to Liberty Guaranteed in Regents, 572.

P 14 The First District's Judgment Conflicts with Code's Mandate for Continuous Service of Good Teachers for the Sake of Children and in the Public's Interest, Spangler , 747,754,756.

P.18 This decision strips Illinois teachers of their constitutional rights for protection from workplace retaliation and denies them protection for speech, while exposing children to the harm inherent in retaliatory orders, including, but not limited to, using them as pawns.

Petitioner's Appendix F

A. V.15R C3684L19-84L13

19 THE HEARING OFFICER: I have a few
20 questions.
21 Do you have in mind the definition of
22 a grievance in the IEA contract with Avoca school
23 district?
24 THE WITNESS: It's defined in the
1 language. Yes, it's a violation of the agreement.
2 THE HEARING OFFICER: It's confined to a
3 violation of the agreement?
4 THE WITNESS: Yes.
5 THE HEARING OFFICER: Some grievance
6 procedures are broad enough to include or working
7 conditions?
8 THE WITNESS: Yes.
9 THE HEARING OFFICER: Yours does not.
10 THE WITNESS: This one does not. It
11 predates the act.
12 THE HEARING OFFICER: Okay. You have
13 answered my question.

B. V.17R C4027L8-4030L13

8 A Yes. I remember that this was a meeting
9 that Karen was basically reporting to us as a group
10 on [student]'s progress so far and whether the things she
11 was implementing within the classroom was working
12 and the positive things she was seeing and we were
13 seeing at home, and it was basically a progress
14 report because I think we were no longer having
15 Anita work with him, pulling him out. Karen was
16 working with him inside the classroom trying to do
17that inside. And I know that the meeting was a
18 very cold meeting.
19 Q Why would you say it was a cold meeting?
20 A Well, you had to be there. You had to be
21 there to see it and feel it. Karen, who I had met
22 several times before, seemed to be this very strong
23 person, I liked her a lot. She was very happy and
24 very, you know, firm in her convictions and all,
1 and she seemed to be like a cowering little rabbit

2 at this meeting. And at one point as I was giving
3 my feedback as the parent in this group, which was
4 complimenting Karen and the steps she had taken and
5 the progress we were seeing in [student] at home, and in
6 his work that he was bringing home from school, and
7talking to Karen, Vinni stopped me basically and
8 told me that my observations weren't necessarily
9 true that it was because Karen was such a good
10 teacher, that very possibly it was because of
11 maturity or subject matter that we were seeing such
12an improvement in [student]. Which, you know, basically
13 what she was doing was taking my input as a parent
14 and throwing it out the window and giving Karen a
15 punch.
16 And I think from that point on I
17 realized that there was this very cold chill in
18 this room, that this was not a team working
19 together, that something was going on which I had
20 no idea of.
21 Q Is there anything else that you remember
22 about this meeting? First of all, what else
23 happened? Did anybody else speak that you can
24 recall?
1 A Well, the meeting finished up. Karen
2 finished her report, everyone agreed that things
3 seemed to be going well and that we should continue
4 with letting Karen provide the services within the
5 classroom, that she was doing a good job. We were
6 happy with it and everything seemed to be going
7 well, and the meeting broke up and Karen left
8 first. I said a few niceties to the others who
9 were still there and thank you very much, good-by,
10 and I walked out in the hallway and I stood there
11 thinking what in the world is going on. Something
12 is going on here that I don't know anything about.
13 Because that was a deep freeze in there. And it
14 was directed at her. And this is my son's teacher.
15 So I went down the hallway and
16 followed Karen down to her classroom and I walked
17 in and I looked at her and I said "So what was that

18 all about," and she looked at me like "What are you
19 talking about." And I am like "Oh, don't give me
20 that, don't play dumb with me. You felt how cold
21 it was in there. I am not imagining things, what's
22 going on." At which point Karen said "Well, I
23can't say anything. I am sorry. Yes, there is
24 something going on, but I have got a gag order of
1 sorts on me. I am just having a little trouble
2 with the administration, you are not to worry," you
3 know, "but I can't say anything."
4 At which point, you know, I said
5 "Well, I hope things work out," and I left. I
6 mean, I couldn't do any more.
7 Q Prior to this meeting had Karen ever said
8 anything negative about anybody in the
9 administration?
10 A No.
11 Q Had she ever discussed the other members
12 of the special ed team with you?
13 A No.

A. **V.17 RC4074L1-75L2**

1 A It was a very decisive election of which
2 I was a caucus member and as a past caucus member I
3 think that it was a very difficult year, it still
4 is, a lot of people are not talking to each other.
5 I got threatening anonymous letters in the mail
6 regarding this election.
7 THE HEARING OFFICER: I think we are
8 going far afield.
9 BY MS. THIELEMANN:
10 Q Did you talk specifically with Mrs.
11 Horwitz about the caucus and the problems as you
12 just mentioned?
13 A Yes.
14 Q What was the nature of that conversation?
15 A It was brought to my attention by several
16 other staff members that the staff morale was very
17 poor, they alluded to Karen, and I felt that, okay,
18 if they are bringing Karen's name into it I should
19 talk to Karen and ask her specifically, you know,

what the morale was, if there was issues that this stuff was happening and the overall consensus from many people was that they did not want to say anything because they did not want to jeopardize -- what was happening to Karen, what they observed to be happening to Karen, they did not want to happen to them and therefore –

MS. PETRETTI: Objection.

V.17R C4076L1-77L5

already. I will permit whatever the witness has already said to stand in the record, but it doesn't move us very far.

Next question.

BY MS. THIELEMANN:

Q The question is did Karen -- I want to clarify one thing you said. You went to Karen, Karen did not come to you?

A Yes.

Q In any conversation you ever had with Mrs. Horwitz, did she ever complain to you that -- about any other members of the staff or talk disparagingly about other teachers?

A Actually, she was very professional and stated very clearly that she was -- this was before the -- I knew about the case, but she was very reluctant to have any discussion about any of the information. And what I do know was that I understand that she at least stated to me that she was trying to resolve these issues in an amicable way and therefore she didn't want to have anyone else muddying the waters for her by getting more involved because many people have asked to come to her assistance and witness for her. And I think for what I understand from her, when I had the conversation, she was appreciative of people's support, yet she really did not want to get it so that it was a circus, I guess, is the best way I can explain it.

V.15 RC 3510L6-3512L12

THE HEARING OFFICER: On the record.
I would like to elaborate, if not
clarify, my ruling and I don't know whether this
will ever come up again, but just so that the
parties are advised.
Venette Biancalana and John Sloan are
not on trial here. Let us assume just for the
purpose of argument that Venette Biancalana had a
thing about Karen Horwitz and only Karen Horwitz
and wanted to make her life miserable. There is,
of course, no evidence of that. But let us assume
the worst case. What is before me, it seems to me,
are the alleged intemperate remarks, demands,
consumption of time and those kinds of issues.I
don't need to write you a brief, Ms. Petretti.
Those are the issues before me.
Is it appropriate for a teacher to
use this kind of language, even if she is being
picked on? Is it appropriate for a teacher to make
certain demands, even if she is picked on? Is it
appropriate for a teacher to consume the amount of
time as to which there has been testimony, even if
she is being picked on?
Do I make myself clear?
MR. RADZILOWSKY: I think part of it, and
this where I am getting somewhat disturbed, is that
I understand these types of questions. There is
also an aspect of perception of what the
administrators perceived with Karen's action.
I mean, we are going to have some
parents come in and testify about these special ed
meetings that were special ed parents and their
perception was that Karen was that -- you know,
that Venette was the one that unreasonable and
unprofessional in how she --
THE HEARING OFFICER: And so what? There
are professional ways of dealing with alleged
unprofessional treatment. One wrong does not

20 justify another. And particularly whereas
21 Doctor -- I am sorry, I have forgotten the name of
22 your expert.
23 MS. PETRETTI: Hazard.
24 THE HEARING OFFICER: Whereas he
1 testified there is a hierarchical organization. It
2 seems to me that communications between a
3 subordinate and a superior must be respectful,
4 regardless of the perception of the treatment. And
5 they must be proportionate to the situation and all
6 of those kinds of concerns. I don't mean by my
7 remarks to limit those kinds of issues.
8 But I will not hear, and you may take
9 this up to as many courts as you wish, I will not
10hear a trial about the competence, treatment or
11 anything else of Dr. Biancalana or Dr. Sloan. And
12 that is my ruling.

V.15 RC3576L3-3577L16

3 THE HEARING OFFICER: Mr. McCluskey, if
4 you would, put that document aside. Stop reading
5 it. Thank you. And tell us from your recollection
6 first, without being refreshed, what it was- Is
7that what you want to know, what was said at the
8 meeting?
9 MS. THIELEMANN: Yes.
10 THE HEARING OFFICER: What you said at
11 the meeting. This is now the AEA meeting of
12 February 1st.
13 THE WITNESS: Right.
14 THE HEARING OFFICER: Okay.
15 THE WITNESS: I covered the various
16 issues that were going on with the parents and with
17 the grading issue.
18 I also said that Karen had been
19 ordered to issue a grade before the grading period
20 was over and that was unusual.
21 I also said that -- I covered, you
22 know, to some extent the remediations and the
23 substance of what was in them. And I mentioned

such things as I thought the district was making very bad mistake by what we saw as a kind of vendetta against Karen for filing a suit, which was how we were viewing it. And that they would be much wiser just to let that case run itself and not get into all the kinds of action they were getting into.

I think we did -- I did say that the parent had requested another teacher and we thought that that was an extremely suspicious action to put a known problem parent's child in this particular class when another one is very much preferred.

I talked about that if people are subsequently -- because we could see that there was a high probability of a dismissal and of course there would also be -- eventually being heard. That people would be subpoenaed.

V.15 RC3636L2-18

A Yes. It was in the general context. I said something like, you know, "Karen is being remediated and I am expecting something to go on there, though I hope it doesn't." She said "Yes," she said, "you know, they have assigned this child from a difficult class there and I know that Sheryl is aware of it."

Q That's exactly what Patty said "They have assigned this child to the class?"

A Yes.

Q Who was she referring to when she said they?

THE HEARING OFFICER: If you know.

BY THE WITNESS:

A The administration.

A. **V.15R C3639L3-21**

THE WITNESS: And also because I knew because she had had the difficult child in her class. Not the difficult child, the difficult parent's child in her class. And there was -- Patty had expressed earlier in the year an anxiety about how to deal with this parent because she felt, and later I found Sheryl felt, that this parent was going to be a problem right through to high school.

THE HEARING OFFICER: The conversation in the fall was a catch up on the situation, you knew that there was a problem involving Karen Horwitz?

THE WITNESS: Yes.

THE HEARING OFFICER: And Patty Flocca was advising you that this might be an additional problem?

THE WITNESS: Yes, we were looking for potential issues that might flair up. I do that all over my locals.

B. **V. 15 RC 3604L24-3609L4**

There was another occasion when she strongly was concerned that the association was not being an advocate enough for the teachers. She wasn't simply saying it for herself, she was talking about the general condition. And I tried to explain to her the ambivalent feelings people felt because they felt that anything smelling of adversarial would get them into trouble.

MS. PETRETTI: Objection, I don't think he can testify as to how other people feel. You know, we are getting into this once again. I mean, it's total speculation and there has been so much of that. I really object to this strongly.

He can testify to specifics, but there are no specifics there and I would even object to that on the grounds of hearsay. But, you know, this total speculation is just to me

17 littering the record with stuff that is highly
18 prejudicial and is not admissable evidence.
19 THE HEARING OFFICER: Mr. McCluskey,
20 please confine your response only to what Mrs.
21 Horwitz told you and what you told Mrs. Horwitz on
22 that occasion.
23 THE WITNESS: Okay. But I was telling
24 you at that point what I did say to her.
1 THE HEARING OFFICER: Okay. You said
2 what to her?
3 THE WITNESS: I said that the leadership
4 is ambiguous because they are scared of
5 adversarial --
6 MS. PETRETTI: This is what I am
7 objecting to, this statement that is based on, you
8 know, layers of hearsay. This was a ruling you
9 gave to me with my witnesses. When was it, and who
10 said it, you know, who was there, what was said to
11 you, and this is like triple hearsay. You know, he
12 is not talking about giving specifics.
13 THE HEARING OFFICER: He is not. As I
14 understand his testimony, he is not telling us the
15 fact of the matter. What he is telling us is the
16 words that were recited in this conversation and
17 that does not establish that any of what he had
18 heard was true.
19 MS. PETRETTI: As long as it's not being
20 accepted for the truth of the matter asserted.
21 THE HEARING OFFICER: Certainly not.
22 THE WITNESS: There was also --
23 THE HEARING OFFICER: I have some problem
24 as to what the relevance of this conversation is.
1 BY MS. THIELEMANN:
2 Q Did you advise Mrs. Horwitz that there
3 was nothing the association could do for the
4 problems that she was asserting?
5 A Yes, I advised her on the grade shift
6 issue that we do not normally do discrimination
7 cases.
8 THE HEARING OFFICER: You mean you do not

normally do discrimination cases for a shift in assignment?
THE WITNESS: Yes. Well, also we don't normally do them in school districts, anyway. We usually refer them to agencies that will do them and instruct them on how to go to things like the Illinois Commission and to the EEOC and what to do.
THE HEARING OFFICER: What kind of discrimination was at issue here?
THE WITNESS: Karen was discussing allegedly -- the allegation she was making was based on age discrimination.
THE HEARING OFFICER: Okay. I have it. Thank you.
THE WITNESS: But there was also another conversation that she had with me because of the removal of Barbara Entin from office. That was another conversation, she phoned me up concerned about it because Barbara had talked to her.
MS. PETRETTI: Object.
THE HEARING OFFICER: Is this in the same time frame, in the summer of '95?
THE WITNESS: That would be a slightly later time, I think. I haven't got the time frames complete. I would think that was '97 when that occurred.
MS. PETRETTI: For the record, if he is representing the Barb Entin thing occurred in '97, I object. That's inaccurate.
THE HEARING OFFICER: Well, whatever. That's his recollection, you see.
All right, so you had a discussion about Barbara Entin.
THE WITNESS: Yes.
THE HEARING OFFICER: Okay. I don't want to hear any more about that.
BY MS. THIELEMANN:
Q Did you give Karen any advice at that time?
A I said, you know, the illness is to prove

1 that there is discrimination. I just relayed what
2 little I know about discriminatory law, and I think
3 I referred her to Mike Lamb. She had some
4 discussion with him subsequently.

A. **V.14 RC3405L17-3406L9**

17 Q With regard to that particular incident,
18 were you aware that Sheryl Haste basically
19 supported Karen Horwitz' version of what the
20 problem was as far as the problem with the team?
21 A I am hung up on the word support. Did
22 she write a letter or did she just support her on
23 verbally? I don't know what you mean.
24 Q Didn't she write a rebuttal to her
1 evaluation during that year that was given to
2 Vinni?
3 A We have nothing to do -- This is a policy
4 making group. We have nothing to do with the
5 evaluations and we don't see the rebuttals. If
6 it's in here, I probably have read it. But at the
7 time I would not have seen a rebuttal to an
8 evaluation. I have never seen an evaluation in 16
9 years.

B. **V.14 R C3407L3-14**

3 Q Either did you see it from Dr. Sloan or
4 did Dr. Sloan or Vinni Biancalana ever tell you
5 about that rebuttal?
6 A We are back to Mrs. Haste, right?
7 Q Right, Mrs. Haste's rebuttal.
8 A Mrs. Haste's rebuttal about her
9 evaluation?
Q Her evaluation and her description of
11 what had been the problems in the fourth grade
12 team.
13 A I don't believe I was privy. That's not
14 something that the board is usually privy to.

internet article, the graven of that complaint and, correct me if I am wrong, was the nature of the statement being made breaches of confidentiality and expressions unsuitable for a teacher and things of that nature.

MS. PETRETTI: Yes.

THE HEARING OFFICER: I also understood from some of the documents here and, again, correct me if I am wrong, that the school district in its admonitions to Mrs. Horwitz at least attempted not to censor the content of the speech recognizing that she has first amendment rights.

MS. PETRETTI: That's correct.

MS. THIELEMANN: Mrs. Horwitz, in her letter to the Wilmette Life and I believe in what someone else published on the internet, did say many times that other teachers had talked with her about similar problems with Mrs. Biancalana. I think she denied it and just yesterday Mrs. Ballantyne denied that there was anybody else involved in feeling frustrated or that they were being unfairly treated.

THE HEARING OFFICER: I recall no such testimony, but you may be right. But even so, look, no organization is perfect. I assume as a human being that there will be conflicts between teachers and the administration. The matter here is how this conflict was handled, this conflict.

MS. THIELEMANN: Don't you think that how it was handled with other teachers as a comparison might be useful?

THE HEARING OFFICER: No, I do not.

MS. THIELEMANN: May I ask a question? Am I prohibited from exploring the way Mr. Lanners felt he was treated by Mrs. Biancalana? If he was treated –

THE HEARING OFFICER: If there is an objection to that, I am inclined to sustain it. There has been no objection thus far.

MS. THIELEMANN: If there is disparate treatment, certainly we are entitled to show that.

MS. PETRETTI: I object. It's not the issue here.

THE HEARING OFFICER: No, Mrs. Thielemann, I don't believe so. When I was with the National Labor Relations Board and we were trying cases of discrimination, disparate treatment came up all the time.

The discrimination issues are not before me, as I understand my charge. That is, discrimination on the basis of color, creed, national origin, age, sex, et cetera, et cetera, et cetera. Those things are not before me. In such a case I think disparate treatment would be part of your case.

The issues before me are, regardless of how other teachers may have been treated, whether Mrs. Horwitz in her conduct was insubordinate and whether Mrs. Horwitz in her conduct was unprofessional.

The objection is sustained.

MS. THIELEMANN: May I make one more comment about this?

THE HEARING OFFICER: Yes.

MS. THIELEMANN: That is that it is not my intention to try to show disparate treatment for the reasons you have listed. My attempt is to show the bias on the part of Dr. Biancalana against Mrs. Horwitz, which can be only shown by the fact that she treated other people better than she treated Mrs. Horwitz for similar -- on a similar basis.

MS. PETRETTI: We are not exploring that here, though.

MS. THIELEMANN: Apparently.

THE HEARING OFFICER: It is difficult for me to understand, maybe I am being obstreperous, but it is difficult for me to understand how better treatment of other teachers by the principal would assist your case. I am sorry, that's not for me to

decide. How it would be relevant to your case is for me to decide.

I am going to sustain the objection and allow you to put together an offer of proof so that you may preserve your record.

MS. THIELEMANN: May I do the offer of proof orally?

THE HEARING OFFICER: No.

MS. THIELEMANN: You want it in writing?

THE HEARING OFFICER: No.

MS. THIELEMANN: You want a question and answer then?

THE HEARING OFFICER: No.

MS. THIELEMANN: In what form would you like the offer?

THE HEARING OFFICER: If the witness were permitted to answer, he would testify as follows.

MS. PETRETTI: Can't he answer? I mean, are you going to pose these questions to him?

THE HEARING OFFICER: No. I think that would unduly -- what, you want the offer by question and answer?

MS. PETRETTI: Well, I would rather. I don't want her speculating. How can she speculate as to what he would answer?

THE HEARING OFFICER: I assume that she prepared the witness.

MS. PETRETTI: Well, I don't know. I am not so certain of that.

THE HEARING OFFICER: Well, if you have no objection to an offer of proof by question and answer, then you may proceed by question and answer. The objection has been sustained and what ensues now is an offer of proof. When you have concluded your questions on this topic, let me know so that we know that we are back into record testimony.

BY MS. THIELEMANN

Q Did there come a time, Mr. Lanners, when you and other of your colleagues became concerned

that they were not being treated fairly by Mrs. Biancalana?

A Yes.

Q Did you and your colleagues discuss this together so that you each shared your feelings about your situation at school?

A You mean as a large group or --

Q No.

A -- just individually?

Q No, casually.

A Casually, once in a while, yes.

Q Was this in the time frame of early '97 or do you recall the time?

A It would have to be in '97.

Q Did there come a time when you and several of your colleagues took your concerns to someone outside the school district?

A Yes.

Q Who was -- you don't need to give a name, but what kind of outside source did you talk to?

MS. PETRETTI: I would want the specifics.

THE HEARING OFFICER: Overruled.

BY MS. THIELEMANN:

Q To whom did you speak?

A I have no idea what her name was.

THE HEARING OFFICER: What position?

THE WITNESS: She was a lawyer located in downtown Chicago

BY MS. THIELEMANN:

Q Did you go to see her alone?

A No, there was a group of us that went.

Q Can you tell me who went?

A It's so long ago. Myself and Karen, Sheryl Haste, I think, and Barb Entin.

Q I beg your pardon?

A Barb Entin.

THE HEARING OFFICER: Does the name Mikva have any meaning to you?

THE WITNESS: Mikva? That might have

been the person we went to see. I don't remember what her name was.
BY MS. THIELEMANN:
Q Do you recall any other people who had similar concerns about their treatment at Avoca West who did not go with this group?
MS. PETRETTI: The objection I have is it hasn't been specified what the concern was. I mean, we are operating in a vacuum here. I think we need some specifics at this point as to what the concern was.
MS. THIELEMANN: I think the concern has been --
THE HEARING OFFICER: I would like to hear it from the witness.
BY MS. THIELEMANN:
Q What was the concern, Mr. Lanners, that you all felt?
A We thought we were being treated unfairly.
Q By whom?
A By the principal.
Q Do you recall if there were any other people or were there other people besides those of you who went to the -- to visit this, I believe you decided now it was a Miss Mikva?
A No.
Q Do you know of other people that you discussed these same feelings with who did not go?
A I can't think of any offhand.
Q Did you ever discuss these concerns with Ms. Laura Gabel?
MS. PETRETTI: Leading the witness.
THE HEARING OFFICER: No, that at least is permitted once the witness' recollection has been exhausted. Overruled.
BY THE WITNESS:
A I may have discussed it with her. I couldn't tell you offhand.
BY MS. THIELEMANN:

Q Did you ever discuss this with a Mr. Joe Baker?
A Yes. Yes, I did.
MS. THIELEMANN: The offer of proof has ended.
THE HEARING OFFICER: Does that complete the offer of proof?
MS. THIELEMANN: Yes.
THE HEARING OFFICER: The offer is rejected.
MS. PETRETTI: Okay.
THE HEARING OFFICER: It's rejected. Of course, there will be no cross examination on that offer.
MS. PETRETTI: As long as it's rejected.
THE HEARING OFFICER: That's right. It's rejected.
BY MS. THIELEMANN:
Q In all the years that you have worked with Mrs. Horwitz, what kind of relationship have you had with Karen Horwitz?
A Very cordial, friendly.
Q You experienced no conflicts with her
A No, I have never had any conflicts.
MS. THIELEMANN: I have no further questions.

A. **V.19R C4578 L18-4579L2**

THE HEARING OFFICER: The issues -- well, let me state what I have to state and then you correct me if I am wrong. There are allegations on the part of the board that some of the writings of Mrs. Horwitz in connection with this election, and particularly what has previously been referred to as the internet article, were untruthful and stirring up trouble and otherwise showing unprofessional behavior.

V.9 RC2088L16-2090L3

Q I think the question was what was your reaction to the article that was published on the internet in October of 1997 that was purported to have been written by Karen Horwitz?

A I thought it was very misleading.

Q In what way?

A There was one reference to if anyone -- I am paraphrasing. If anyone complains about something, their children are sort of "targeted." You know, you're going to have difficulties later on, so you kind of just keep quiet and go along with the administration. That's what it seemed like. Don't ruffle anybody's feathers here.

Q Did you find that to be inaccurate?

A Yes, I found that to be inaccurate. I found that the administrators were very open if you had some disagreements or so forth that they just tried to get down to the bottom of it, you know. That certainly I thought was misleading.

Q Anything else?

A And I think that it divided up the community. I think there were those that felt, you know, is this true, is this really going on at Avoca because we never heard of this. There were supporters of Mrs. Horwitz who I am sure, you know, probably -- they would have supported it. But there was a division there. I am sure. And we never talked about it. It was just something -- like if some parent -- no parent ever mentioned this to me. I never brought it up to parents. It was out of our school.

Q With regard to your comment that you said there was something that you recall in the article about if you make any complaints your children would be retaliated against?

A Yes, that's in general.

V.16 RC3937L3-3938L19

I also said that the intemperate tone of Mrs. Horwitz' remarks appeared both unprofessional and insubordinate. I did not need the testimony of Dr. Hazard to conclude that a subordinate in an organization must treat superiors with respect; that is, or should be, a matter of common knowledge. I then gave as examples the phrase "psychological rape" and the attribution to the administration of untruthfulness in the strongest terms. I do not recall the use of the term "liar" although it may well have been used; the inference could readily be made. At that Mrs. Thielemann took umbrage, saying "but what if they really were lying?" or words to that effect. I did not get a chance to respond because the conversation went on to other matters. I have reiterated that Dr. Biancalana and Dr. Sloan are not on trial. To the extent that their credibility is in issue, it relates solely to the testimony which they have given before me and not to statements made in the course of their duties. Moreover, truthfulness, so as far as I know, is a defense only in defamation. It is not a defense to a charge of insubordination. If calling a superior a liar is an act of insubordination, and I am inclined to think that it is, regardless of the provocation, it is no defense to show the lie or lies, and I will not hear such evidence.

In short, I believe it to be true that there is no defense to a proved act of insubordination or unprofessional conduct. The rule, in layman's terms, is "work now, grieve later". I don't necessarily mean a grievance under the collective bargaining agreement, but if an employee is faced with a direct order or a duty to act or to refrain from acting, the employee must act accordingly -- under protest if necessary --

16 but act. The time for taking the protest up the
17chain, using temperate and appropriate language, is
18 later. If there is authority to the contrary, I
19 would be pleased to learn of it.

A. **V.17RC4146L11-19**

6 Did you have any -- receive any
7 comments about that letter after it was published?
8 MS. PETRETTI: Objection, calls for
9 hearsay.
10 THE WITNESS: Just --
11 THE HEARING OFFICER: Wait. What
12 difference does that make?
13 MS. THIELEMANN: Well, I think it shows
14 the reaction of the community.
15 THE HEARING OFFICER: Sustained.
16 MS. THIELEMANN: How much of a community
17 matter it was.
18 THE HEARING OFFICER: Sustained. Move
19 on.

B. **V.16 RC3939L14-20**

14 During an off the record discussion
15 after the court reporter had left for the day on
16 July 13, Mrs. Thielemann expressed concern that I
17 had prejudged the case. I replied, in part, that I
18 could hardly ignore those writings of Mrs. Horwitz
19 which have properly been authenticated and are in
20 evidence without objection.

C. **V.22 R C5410 L 18 -11L10**

18 Mrs. Thielemann, I am not going to go
19 through another three weeks of hearing on this.
20 MS. THIELEMANN: I don't intend this to
21 be another three weeks, but I would like to be able
22 to cross examine her on some of the things she was
23 asked on direct examination.
24 THE HEARING OFFICER: You have five
1 minutes to complete your cross examination. You
2 can use it in any way you want. I strongly suggest

3 that you cross examine her on matters on which she
4 was examined.
5 MS. THIELEMANN: Well, she was examined
6 on exhibit -- both these exhibits.
7 THE HEARING OFFICER: You now have four
8 minutes and 30 seconds.
9 MS. THIELEMANN: I think the record will
10 note my objection.

V.16 R C3929L16–3931L6

16 THE HEARING OFFICER: There has been a
17big brew ha ha here about the internet article.
18 Where does that fit in to your --
19 MS. PETRETTI: I think that's a perfect
20 example of -- I think she talks about special
21 education in that to third parties, a perfect
22 example.
23 THE HEARING OFFICER: Okay. So the
24 internet article may relate to more than one of
1 these allegations?
2 MS. PETRETTI: Yes. Right. Because
3 there is a lot of things about just being
4 critical -- you know, being critical of the
5 district.
6 THE HEARING OFFICER: But it would have
7 to relate to one of them which is at least broad
8 enough to include outside people?
9 MS. PETRETTI: Right. Well, inside
10 people heard that as well though. You know, it
11 goes to A-9 in that "Engaged in conduct which
12 demonstrated an unwillingness to follow the
13 legimitate directives of and recognize the
14 authority of the superintendent and the principal
15 in that you have displayed an uncooperative
16 attitude toward them in front of teachers, parents
17 and students."
18 It goes to B-1 too. It goes to B-3
19 as well. It goes to B-5.
20 THE HEARING OFFICER: Well, 5 I can see.
21 The others I have some trouble, but B-5, it

22 certainly goes to -- I mean, that one is written
23 broadly enough to encompass communications to the
24 outside world. "Repeatedly demeaned and undermined
1 the competency and performance of colleagues,
2 teachers and staff members."
3 I would think if it had to be nailed
4 down to a particular one, it would be B-5.
5 All right. I think I have got it.

V. 4 RC889L5-894L24

5 Q Did you review this document? And this
6 is a document entitled Crisis at Avoca District
7 Number 37: Welcome to the Dark Private Side of
8 Public Education. Is that correct?
9 A Yes.
10 Q And this appears to be something that was
11 published on a web site, is that correct?
12 A Yes.
13 Q Now, you were testifying that in
14 reviewing this you saw that there was --
15 THE HEARING OFFICER: May I interrupt?
16 MS. PETRETTI: Yes.
17 THE HEARING OFFICER: Did Mrs. Horwitz
18 admit authorship of this to you?
19 THE WITNESS: No.
20 THE HEARING OFFICER: Did she say that
21 this was --
22 THE WITNESS: No.
23 THE HEARING OFFICER: It purports to be
24 hers.
1 THE WITNESS: It purports to be hers, but
2 in fact this did not come up at the interview. In
3 other words, I did not interview her about this
4 document.
5 THE HEARING OFFICER: Thank you, you have
6 answered my question.
7 MS. THIELEMANN: About which document?
8 THE WITNESS: This one.
9 MS. THIELEMANN: 45, okay.
10 THE HEARING OFFICER: Thank you.

BY MS. PETRETTI:
Q With regard to this document, you said that it supports your opinion that she demonstrates histrionic narcissistic and personality traits with paranoid ideas.
How does this document support that statement?
A Well, the first paragraph under notes from Karen Horwitz that a school -- it talks about a staff meeting being held deliberately because she wasn't there that supposedly attempted to turn the staff against her and that there was also -- in the second paragraph that there was essentially some type of collusion, it implies a collusion between the union president and Dr. Sloan.
Q Did she discuss this at all with you at the interview?
A She didn't bring it up. I did not cross examine her on this document or interview her on the document.
Q Was there anything else about the document that led you to believe --
THE HEARING OFFICER: Excuse me. This was a document which you reviewed in forming your opinion?
THE WITNESS: Right.
THE HEARING OFFICER: Is that correct?
THE WITNESS: Yes.
THE HEARING OFFICER: Where did this document come from? Was it supplied by Mrs. Horwitz or supplied by --
THE WITNESS: The school.
THE HEARING OFFICER: The Board of Education?
THE WITNESS: It was supplied by the school.
THE HEARING OFFICER: Thank you.
THE WITNESS: Or the attorneys for the school. I don't know who.
THE HEARING OFFICER: That's good enough

for me.
Thank you. You may proceed.
BY MS. PETRETTI:
Q Was there anything else about this document that funneled into your second opinion?
A Yes.
Q What is that?
A On the page that says essay submitted to Wilmette Life, in the second paragraph, the last sentence, it talks about her having uncovered like things that -- the true essence of Avoca system and that it took her almost two years for her to uncover, that certainly again alludes to some type of bad thing happening that she uncovered.
Q At the interview did she describe anything that she had uncovered with any specificity?
A Only as I have already testified, having to do with age related issues and some issues with her, her educational style, non specific terms.
Q Did she say anything other than age discrimination? Did she give any specifics about how she had been discriminated against with age, on the basis of age?
MS. THIELEMANN: Actually, the document speaks for itself.
BY MS. PETRETTI:
Q I am asking --
A She didn't tell me -- the answer to your question is she did not tell me at the interview. It was her perception that that was a basis to get her, but other than that, no.
Q Is there anything else in this document that you used to form the basis of your second opinion?
A Well, in the last full paragraph of my version of the one that starts last May.
Q On what page?
A This would be the title page of the essay submitted to Wilmette Life. She makes kind of a

19 negative estimate about the board being status quo,
20 contrary to many citizens, which apparently is an
21 opinion of herself, and that interestingly she said
22 over the next sentence "Over the course of years in
23 which I have been employed countless parents." She
24 adds certain adjectives which are very dramatic and
1 hyperbolic.
2 So in this sentence, "Over the course
3 of years," she uses countless parents' unbelievable
4 stories, about policies and procedures et cetera at
5 the school, and then the next sentence she said
6 that she tried to be essentially -- I read it as
7 she tried to be a team player and told people to go
8 through channels.
9 Q Did she identify any of the countless
10 parents at your interview?
11 A No.
12 Q Did she identify any of the serious
13 complaints or serious concerns about policies,
14 issues and teachers?
15 A She may have mentioned somebody by the
16 name of Dover at the interview.
17 Q Is that a --
18 A That was a telephone call that she
19 aborted because of chest pains, I believe.
20 MS. THIELEMANN: I didn't hear the last.
21 BY THE WITNESS:
22 A I think she aborted a telephone call to
23 this parent due to chest pains or chest discomfort.
24 That's the only parent name I recall.

V.16R C3968L8-75L1

8 MR. RADZILOWSKY: I would like to be
9 heard.
10 THE HEARING OFFICER: You want to pay me
11 in another hearing for that kind of thing? That's
12 what I hear, but not here.
13 MR. RADZILOWSKY: I would like to be
14 heard briefly on this point. One of the things or
15 the criticisms of Karen Horwitz was that the school

district was in violation or non-compliance with the law on how they handled the IEP's, and the next document I was going to hand the witness would be --

THE HEARING OFFICER: What?

MR. RADZILOWSKY: One of the criticisms that she raised in a letter she sent to Wilmette Life and what she talked about was that the school district was not following the law as far as the special ed.

THE HEARING OFFICER: You want to prove that fact?

MR. RADZILOWSKY: Well, I want to prove the fact that other people were raising the same issue in the same context.

THE HEARING OFFICER: No, sir.

MR. RADZILOWSKY: I mean, I can't establish the fact that --

THE HEARING OFFICER: So what?

MR. RADZILOWSKY: Well, I think that to the extent that it's a matter of public interest whether the school district was following special ed law.

THE HEARING OFFICER: I assume that that's true.

MR. RADZILOWSKY: Okay. That the fact that she --

THE HEARING OFFICER: And if she were the only person raising the issue, it would still be a matter of public concern, would it not?

MR. RADZILOWSKY: But I think to some degree it would go to the legitimacy in whether or not the context of other people raising it and the basis --

THE HEARING OFFICER: I know something about free speech in this country.

MS. PETRETTI: Can I object?

THE HEARING OFFICER: In a moment. And the constitutional protections which it has.

MR. RADZILOWSKY: Okay.

THE HEARING OFFICER: And I think we have to be very, very careful here in determining where, if at all, Mrs. Horwitz overstepped what is her constitutional right to do. I am very sensitive to those concerns and have been since the beginning of this hearing, but the fact that other people were concerned about it does not make it any more or less protected by the first amendment.

MR. RADZILOWSKY: Well, I think that the two points I responded to, that the extent other people were raising that issue, I think it goes to the context of you have a balancing act as to whether something is protected speech and the more public importance it has and the more it's a matter of community speech, you know, I think the more that people having the right to debate it makes sense in that balancing act.

THE HEARING OFFICER: I am not real --

MR. RADZILOWSKY: They are accusing her of lying about the fact and raising issues that no one else saw. You had all the testimony about that internet letter or the items in the internet letter. Everybody is saying, well, she is the only person who ever said this or ever raised this to us. To that extent --

THE HEARING OFFICER: Even if that were true, she would still have a constitutional right.

MR. RADZILOWSKY: I understand that she would have a constitutional right to do so, but for them to get up and look at that article and say "We have never heard this criticism, we have never heard these issues from anybody else and we think she is lying," when you have got other people raising those issues --

THE HEARING OFFICER: You know what, I think even --I think lying is constitutionally protected. It's the manner and method I think consistent with her obligations as an employee of the school district. And I don't see how in the world Mr. [parent]' testimony could assist me in

24 making that balance.
1 MR. RADZILOWSKY: Well, I think to the
2 extent that they have accused her of improperly
3 saying things to parents critical of the district
4 and the fact that he would have had those
5 criticisms totally independent of her, I think -
6 THE HEARING OFFICER: I think I have
7 addressed that already. I thought I was doing
8 pretty well for myself. Ms. Petretti, you want to
9 help me out?
10 MS. PETRETTI: I just want to object to
11 the discussion of first amendment issues here and
12 now. I really don't think that is what's before
13 us.
14 THE HEARING OFFICER: Insofar as there is
15 public criticism -- insofar as any of the writings
16 of Karen Horwitz have to do with the public
17 criticism of the school district, there are
18 undeniable first amendment rights.
19 MS. PETRETTI: Regardless, I think we're
20 now getting off on legal discussions which I think
21 Mr. [Parent] is here basically as a fact witness
22 to give us facts.
23 THE HEARING OFFICER: Right.
24 MS. PETRETTI: I think Mr. Radzilowsky is
1 pontificating quite a bit, but there is no evidence
2 that there was any accusation of unlawful conduct,
3 you know, from this witness and so I think all the
4 discussion that we are having here is irrelevant.
5 THE HEARING OFFICER: I thought I said
6 essentially that, at least on this point.
7 Yes. Mr. Radzilowsky.
8 MR. RADZILOWSKY: You rejected one of his
9 letters. I would like to --
10 THE HEARING OFFICER: How many of his
11 letters do you want me to reject?
12 MR. RADZILOWSKY: I would hope you would
13 consider each of them.
14 THE HEARING OFFICER: I am sorry for the
15 MR. RADZILOWSKY: I would hope that you

17 would look at each letter with an open mind and
18 resolve each issue before you.
19 THE HEARING OFFICER: Yes, I will.
20 MR. RADZILOWSKY: If our views are
21 different, then at least I would like to make my
22 record. I certainly have tried to do it in as
23 polite --
24 THE HEARING OFFICER: Absolutely.
1 MR. RADZILOWSKY: -- and as clear a
2 fashion as possible.
3 MS. PETRETTI: Just for the record,
4 disagreeing with the district is a totally
5 different thing than making an accusation of
6 unlawfulness or stating that there is something
7 unlawful going on.
8 THE HEARING OFFICER: I think even the
9 statement that there is something unlawful going on
10 is or may be constitutionally protected
11 consistently and that's where the balance comes in.
12 Particularly if it's unlawful, I think it may -- if
13 the allegation is that it is unlawful, that may, as
14 Mr. Radzilowsky points out, make it of more
15 pressing concern than if it were not.
16 MS. PETRETTI: You know, once you get
17 into it, they are going to have to prove that there
18 was something illegal once you get into this.
19 THE HEARING OFFICER: No, they don't.
20 They don't have to prove the truth of the
21 accusations. I am not going to hear that. The
22 issue comes down to was she making fair comment
23 upon matters of public concern in a manner
24 consistent with her obligations as an employee of
1 the school district.

A. **V.17 RC4071L1-4073L16**

1 I know her conversation was regarding
2 her daughter and also about she is a devout
3 Christian and about her religious beliefs being
4 that -- I attend some bible studies with her.
5 Q Did she ever discuss the specific

teachers that her child had?
A She did one year when she was very concerned about having Mrs. Horwitz, thinking that because her husband was--I can't remember what he is, his ethnicity. She was very concerned that because Karen was Jewish that she would take it out on her daughter and that was again part of that conversation about her daughter not being recognized for her strengths and that she felt that -- actually, prior to her placement into Mrs. Horwitz' class she asked who was recommended and she had surveyed many people of which she said Mrs. Horwitz' name has come up several times, "What do you think of her." I said "I have never had her as a teacher, I can go by my conversations with other parents who very much so respect their children's achievements."

And at that time I said from the people that I know and from the teachers that I have had with my children, you know, I would say that Karen is probably the best match if you want someone who will acknowledge your child's giftedness.

I think she was still not convinced and she then did a very extrapolated classroom observation and then came in several times for observation and then she -- I did not know that her daughter was placed in Karen's class until the school year had started. She called me again and said "I am not sure. What do you think of her?" And I said "Why is that," and she went on and on, and said "Could she be against my daughter because she is not Jewish."

Q What did you respond?

A Well, I looked at it as because part of her frustration as being a Christian and that -- because that is a very key part of her personality as well. She is a devout Christian and she is anti-Semitic in some ways because she --

MS. PETRETTI: Objection.

THE HEARING OFFICER: Yes. Don't draw any conclusions or give us opinions, that will tend to clutter the record.

THE WITNESS: Okay. Sorry.

THE HEARING OFFICER: Just conversations and observations.

THE WITNESS: In her conversations with me she would have lengthy religious conversations; therefore, I knew what her views were regarding different religions and also her conflict that she was beginning to have with Mrs. Horwitz, of which I would always direct her back to Mrs. Horwitz and saying that, you know, "I know that she is a reasonable woman, if you need to have a conversation with her, bring it to her attention." But I did not have any further discussions after she had asked me those questions because it wasn't that I was supporting her, I was just trying to redirect her back to the situation.

A. **V.17 RC3555L8-17**

Q Who had called this meeting?

A Dr. Sloan, I think, had sent a certified letter to Karen. Karen had been ill and she phoned me up on the Thursday night and said "I got a command performance tomorrow morning with Jack" and can I get there? I said "I'll be there." She was very upset, she said "I have got a whole class of parents and grandparents coming in and now that's ruined and they want to investigate some of the issues that are going on."

B. **V.17 RC3556L8-3558L20**

Q Do you recall what discussion was held during that meeting?

A Yes, there was a list of ten items that were to be the basis of a new remediation of Karen that would be submitted to the board on the following Monday, I think. So this was the Friday. And it was the last day of the school term.

I made some strong objections about the lack of pedagogical concern by the superintendent in demanding the meeting during school time. It could perfectly have been done either before school or after school.

Q Did he respond to that?

A He said it was his convenience, he couldn't do it any other time, something like that.

We also objected that some of the reasons in this list were old ones, you know, it was just simply the usual -- well, unusually high overkill in the amount -- I mean, it was just saying the same things said before as though they were new events, I suppose.And we gave and Karen gave a number of rebuttals. Some of the things weren't as factual as they should have been.

Q Some of the items that --

A Some of the items. You know, there was the double talk about a tape. She had given them a copy of a tape and they claimed they wanted the original tape. That kind of thing.

I would have to look at the whole list of them. They were in a definite letter that was given us.

Q Do you recall if there were any special education issues involved?

A Yes. There was a question that concerned Mr. Tuttle and some special teachers. Karen had raised some questions about the usefulness in some of the approaches. In one student's case there was a professional difference of opinion about methods to be used.

But Mr. Tuttle's position generally was not that of an adult, but one sort of telling the teacher this is how it is and this is how it should be rather than any discussion of whether there was any validity in Karen's concern. So there was discussion of that, yes.

Q Do you recall how the meeting ended?

A Frostily, not for the season.

Q Did you say this was the day before the Christmas vacation?
A Yes, it was the last day of school.
Q Last day of school before Christmas vacation?
A Yes.
Q Do you remember if Karen was given any directive at that time?
A Yes, she was told to go home and look for a document related to -- I think it was grading, that she wondered if it existed on her computer or not, if she had one, and she was told not to go back to class, but to go home and take the rest of the day, if necessary, to produce this.
Q Do you know who told her that?
A Dr. Sloan.

A. V. 14R3377L1-3378L7

It's an improper question for this witness. Move on.
MR. RADZILOWSKY: I mean, --
THE HEARING OFFICER: Right now.
MR. RADZILOWSKY: All right. I just want to --
THE HEARING OFFICER: I know what you want. Move on.
MR. RADZILOWSKY: All right. I will move on.
Q I would like to draw your attention to Board Exhibit 292.
A Okay.
Q At the very bottom there is this black line. I guess my question to you is this was directed to all members of the Board of Ed.
Do you know what is under that black line or what's supposed to be there?
A No.
Q Do you recall when you saw this document as a member of the Board of Ed, was this black line

on the document that you received or was there --
A My assumption is that it wasn't there. But I have no idea, you know, when it was reproduced, or whatever. I don't know what it says. This was two years ago.
Q I understand. So it's your assumption that what you got was a document that contained whatever the writing is under that black line, is that fair to say?
A I would assume so.

V.RC3379L3-3380L24

THE HEARING OFFICER: Mr. Radzilowsky, what's your point?
MR. RADZILOWSKY: I am just trying to determine whether this witness can establish that the copy of this letter that we have is the accurate --
THE HEARING OFFICER: This seems to be the same document. If you want this in, I'll receive it. There is nothing in here that needs to be redacted, is there?
MS. PETRETTI: You know, the name --
THE HEARING OFFICER: That's a parent's name.
MS. PETRETTI: Well, we have been trying to keep the parents out of it. But I have offered to go through the exhibits and redact.
THE HEARING OFFICER: Fine, if you want it in, it appears to be the same document, Mr. Radzilowsky.
Move on.
MR. RADZILOWSKY: Well, I think that there is a --
THE HEARING OFFICER: Move on.
MR. RADZILOWSKY: The sentence at the bottom --
THE HEARING OFFICER: Look, Mr. Radzilowsky, you have until 3:59 with this witness. If you want to go on stuff which is immaterial,

that's okay. But that's all the time you have with this witness and I suggest you move to something substantive.

MR. RADZILOWSKY: I mean, I guess I am not understanding what appears to be the language --

THE HEARING OFFICER: I have told you before that this is in only as notice to the board, there is nothing in here for which I will accept the truth of the matter asserted.

MR. RADZILOWSKY: You don't think the fact that an exhibit was presented with --

THE HEARING OFFICER: Do you want to argue? Do you want to consume your time arguing with me, Mr. Radzilowsky, or do you want to ask the witness a question?

MR. RADZILOWSKY: I will be happy to ask the witness a question.

A. V. 14RC 3343L10-3344L9

MR. RADZILOWSKY: The copy I have has a line that's totally blurred out of it.

THE HEARING OFFICER: At the very bottom.

MS. PETRETTI: That's what I have as well. I don't know if we have an original. We will check into it to see if we can find it. I don't know.

Q At any rate, can you identify this for the record?

A This was the letter that came into the board indicating what had happened in that classroom and by, I believe, a parent of a child that was in the classroom.

Q In the first paragraph there is an indication that the children raised their hands and said Mrs. Biancalana was lying, they did not believe a word she said. Is this what you were phrasing your concern about?

You have been in the district a long time. Did there come a time several years ago when you began to feel or think you were not being treated properly by the school district in some fashion?

MS. PETRETTI: Objection.

THE HEARING OFFICER: What's the relevance of this?

MS. THIELEMANN: Well, I'll tie it up in a minute. The relevance is that he felt that he was being mistreated and that some action ensued after that.

THE HEARING OFFICER: Yes. And?

MS. THIELEMANN: The point here is that Mrs. Horwitz is not the only person who felt that way at that time and I don't want to leave it in the record that it appears that Mrs. Horwitz was the only one. She was not.

THE HEARING OFFICER: Mrs. Horwitz is the only one we are dealing with.

MS. THIELEMANN: I understand that, but we are dealing with the fact that she felt that she was being mistreated and the emphasis of the school district has been Mrs. Horwitz' fault. My point is other teachers felt they were being mistreated at the same time. It seems to me it's very relevant.

THE HEARING OFFICER: Objection sustained.

V.13 RC3115L5-3116L11

MR. SCARIANO: It's also a thought process through the administrative agency and it's also a deliberate process privilege. It's also not relevant. They voted an action for dismissal after three notices of remedy.

I won't address counsel, Mr. Hearing Officer, I will address the Hearing Officer in saying are the charges to be sustained for dismissal, not whether did the board know. The board could do this in a lark and if there is proof that she is guilty of the charges and the charges are either remedial or they have been given notice to remedy and they haven't been remediated, then it's over.

The board can be watching TV during a board meeting when it's considering this stuff. It's not relevant.

THE HEARING OFFICER: Isn't that true, Mrs. Thielemann, that the deliberative process of the board is not in question here? It's a question of what the board did and how Mrs. Horwitz responded to it.

MS. THIELEMANN: I don't think I quite agree with that. It seems to me that there needs to be some evidence that the board acts reasonably and you can't tell if they are acting reasonably if you don't know what they know.

THE HEARING OFFICER: The question of whether they acted reasonably is a question of whether the evidence in this record supports the action that they took.

V.38 R C9326-9229

Essay submitted to Wilmette Life on 10/9/97 by Karen Horwitz

I urge you to become informed about the real issues at Avoca School District rather than perpetuate the falsehood that everything there is just fine, when the opposite is true. I have been agonizing over whether I should break the conspiracy of silence so embedded in the essence of what the Avoca School District #37 has been all about and then I read the two articles in the Wilmette Life implying that members of the Caucus are dishonorable, so I made an appointment with Ed Callahan, the reporter who had written the aforementioned article, to explain what is really going on at Avoca School District. It is time that the small percentage of people who revere power over right, and the self interest over what public education is supposed to be, stop controlling the air waves. For me, those articles were the final straw.

Last May, when the Avoca Caucus slated three new candidates for the Board, I felt my first glimmer of hope that there were some upstanding citizens who realized that Avoca is a public school and is here to serve all, rather than a few select people. They were attempting to change the Board which has historically ruled on the side of status quo and made decisions which were contrary to many citizens. Over the course of the years in which I have been employed, countless parents have come to me with serious complaints and concerns about policies, issues and other teachers. Some have shared unbelievable stories. I have consistently encouraged these people to go to the Board or go to Dr. Jack Sloan and the response I would get was either, "There's a history of retaliation against your children if you complain," "They don't listen," "They're already mad at me so I am afraid to say another thing," "It's hopeless," "I stopped coming around or participating since it was clear I didn't count,""I was repulsed by what went on", or "I'm not in the 'in crowd'". The sad thing is that many teachers echoed the same exact concerns, except that the retaliation would be against them and that they had seen it happen over the years.

The Avoca slogan seems to be: "No one goes against the Board or Dr. Sloan."

I have nothing against any individual Board member since most of them appear to be fine people. Furthermore, I have had professional dealings with a few of them and found them to be quite respectable. However, I became totally disillusioned with the Board as a whole when

9326 **7290**

I had a lawyer send each Board member a letter describing inequities that were happening to me and many older teachers as well as policies and decisions that were detrimental to the children. (This letter was sent after countless attempts to discuss things with Mrs. Biancalana over the past three years, and then a very serious and lengthy discussion with Dr. Sloan in the fall of 1996. In addition, I contacted the AEA Union representative who told me that these were not Contract issues and that he could be of no assistance. Violation of my First Amendment rights as well as my Civil rights needed to be pursued on my own.) In this letter, my lawyer stated that I sincerely wished to settle these issues amicably. Not one Board member contacted me, nor did any of them investigate the situation by speaking with other members of the fourth grade team. In fact, the only contact Board members had was with a fellow teacher questioning her at a social event as to what this letter was all about, treating it as "gossip" rather than as a serious issue. Meanwhile, Venette Biancalana, the principal, immediately called her "friends", several of whom were past teachers in the district, telling them that I was "suing her". It appears she received no direction regarding how to properly respond to a serious issue. Hence, I was forced to file a charge of Age Discrimination with the EEOC. Knowing it would be costly to the district, I did so with much reservation, but I was left with no alternative. My goal was to make our district a better place for the older, more experienced teachers. A simple discussion and investigation could have avoided what has become an unnecessary burden to the taxpayers. The message to me was that they would rather spend considerable amounts of money on lawyers' fees

than listen to an employee who they acknowledged as an excellent teacher and who has been applauded by many parents.

When I read Ed Callahan's article of October 2, I knew that I had to come forth and break this veil of silence and support Earon Davis and the others who want to see changes in this district. Although I do not know these honorable caucus people personally, I know that they do not have a personal agenda as suggested in the first article. They are trying to meet the needs of the majority of people and teachers who complain but are squelched or worse, intimidated. As for any dissenting members of the Caucus, who know of the problems and yet are fighting to maintain the old Board, I am deeply disappointed.

After teaching at Avoca for one year, I was told that I did not have the right of free speech by the administration. They told me that I could not make any statements about the job that parents did not want to hear regardless of whether they were true or not. I have come to know that the "parents" to which they referred must be a select group, since the majority of parents with whom I have dealt, have the same concerns as I do. Then in November of 1996, Dr. Jack Sloan warned me that "if any teachers escalate any issues in this district, he would make their lives miserable". This was one issue for which he kept his word. However, living the

deception had been far more miserable than any punitive directives that have been issued against me. Furthermore, each punitive action indirectly hurt the students and that defies everything I stand for as a teacher. Is this what the majority of parents want? Do they believe in maintaining a dictatorship in which teachers and parents are suppressed if they have different opinions? Do they not know that excellent teaching thrives when teachers who feel good about themselves share the love of life and learning with their students? Could there be any wisdom in silencing the teachers with experience so none will pass it down by serving as mentors to the less experienced? In no other organization

do the less experienced people take over. How could mistreated teachers share enthusiasm with their students when they dwell in the depths of injustice? Do they want people who look the other way because they need a job? In my mind this is more than a job; this is a calling. I worked successfully in business for several years. I came back to teaching because I wanted to do my part to help society and make this a better world. How can they justify running a school like a private business as though the "management" owns it? Every publication on teaching today suggests that teachers need to be decision makers and administrators need to collaborate and use a team approach. Why is the Board so agreeable to supporting dominating administrators that rule by silencing the teachers or life blood of any school? What are they afraid of? How could teachers accept unfair treatment like abused children, and still convey what critical thinking is? They cannot. Is that what this district of Wilmette wants for their children? Is it true that most parents only want nurturing and don't care about great teachers? Or is this their excuse for striking down any independent thinking?

How could two officers of our Union issue a statement to all Board members and candidates, against my asserting my Civil Rights, on behalf of the Union without consulting the other officers or the members? They accused me of not taking the proper channels without speaking to me first. I did, in fact, consult the Union representative who indicted my issues were not contract issues and that they could not help me. Since my issues were not contract issues, they have no right interfering with my Civil Rights on behalf of the members. It appears they did so out of fear of reprisal for remaining silent, as if in agreement. And with that being the case, whose "Union" is it, certainly not the teachers. The teachers were not involved in that decision; that decision came either directly from or implicitly from the administration, a tangible example of the divisiveness and secrecy. Even my respectable fellow teachers are forced to perform unjust deeds.

When I received my elementary education degree, I was inducted into Kappa Delta Pi, which is an Honor Society in

Education. I signed a pledge which amongst other things read: "Education builds not alone for the present but for the future; not merely for self, but for society

9328 **7292**

as well. Service incentive of the world's great teachers, means that I will so live that others are empowered and enriched thereby. It means that as a teacher I will lose myself and so find myself in ceaseless effort to advance justice and peace for all people. All this I pledge as an ideal of Service." Although this is my opinion and I can only speak for myself, this is much more than one teacher's dissatisfaction with a system; this is a dysfunctional system that works only with cover ups and changing the rules in midstream as evidenced by the parallel situation currently occurring within the Caucus. Therefore, as a resident of Wilmette whose children will be in school alongside these children, as a person who believes in the goodness of humanity, and as a teacher who remains faithful to the ideals of this profession, my greatest hope is that if I can risk having my life "made miserable", you too will come out and speak and make this the district what it should be and can be. With your support, other teachers who believe they are also having their rights violated will risk speaking and regain their dignity too.

9329 **7293**

April 27, 19998

Dr. John Sloan
Superintendent of Schools
2921 Illinois Road
Wilmette, IL 60091

RE: Avoca School

EXHIBIT

Dear Dr. Sloan,

I am writing to you at this time in support of the Avoca teacher, Ms. Karen Horwitz. I understand that currently the Avoca School Board has issued Ms. Horwitz a Notice of Remediation. I think it important that the administration and the Board know what the parent and pupil response has been to Ms. Horwitz as a teacher.

My son, [redact.] has been in Ms. Horwitz' class for the past two years. When it was announced in his fourth grade class that Ms. Horwitz would be teaching fifth grade in the coming year, every child in the class requested to be placed in her fifth grade class. I consider [redact.] fortunate to be among those placed in her fifth grade class. Ms. Horwitz is a marvelous teacher. She knows how to teach to every pupil at his/her level so that the child can achieve what he/she is capable of. Her science class has been run, hands on, and extremely effective in teaching the children the material assigned.

I was very dismayed over a recent conversation with Ms. Biancalana, which I feel compelled to relate to you. Ms. Horwitz has recently been absent from school. Her class was not assigned a consistent substitute, but instead, had a different "sub" every day. I was not informed by the principal that Ms. Horwitz would be absent for an extended period. Every day, [redact.] came home to tell me he had a different "sub", and no homework. I called Ms. Biancalana after two

weeks, to register my concern that no consistent "sub" had been placed in the class. Ms. Biancalana did nothing to suggest that Ms. Horwitz was ill and that the course of her illness was of uncertain duration, or of concern to the administration. Instead, she told me that Ms. Horwitz caused the situation by calling last minute to inform of her absence, and that Ms. Horwitz was

the continued cause of the lack of a consistent "sub", since she did not know when she would return. Ms Biancalana then informed me that Ms. Rachel Palmateer would be placed with the class as of April 20, until Ms. Horwitz would return.

I did not feel that it was appropriate for Ms. Biancalana to say or infer, that a teacher was at fault for the lack of a consistent "sub" in a classroom. This is an administration problem, and one which occurs with some frequency, I imagine. I am sure that no teachers plan their illnesses. Absence due to illness is commonly a last minute thing.

I am concerned too, that the lack of administration response to placing a "sub" may have been delayed because of the administration's disputes with Ms. Horwitz. I realize that this may be a gross speculation, but Ms. Biancalana was certainly hostile in her discussion of the teacher's absence. Her inference that Ms. Horwitz was responsible for the absence made me think she wanted me to join in placing blame on the teachers.

Earlier in the year, the students in Ms. Horwitz' class had a party. They had planned to see the video "Space Jam" at the party, and all the parents had to sign approvals for their students to view this movie. Ms. Biancalana did not give her

approval, and on the day of the party, was "not available" to give her approval. As a result, the children could not see the movie they had chosen. Again, I could speculate that the principal's unavailability on that date was contrived to hurt the teacher. Of course, the students were the ones who were hurt.

Of course, I am not privy to the specifics of any disputes between the administration and this teacher. However, I am concerned that the administration, in furtherance of this dispute, may be jeopardizing the children in the class. I

ask that this letter be shared with members of the Board, and I welcome questions or comments regarding the substance herein.

Very truly yours,

s/[Name redacted]
Cc: Ms. Dorothy Ballantyne

May 18, 1998 **V.38 RC9340-9341**

Ms. Dorothy H. Ballantyne
President, Board of Education
Avoca School District No. 37
2921 Illinois Road
Wilmette, IL 60091

EXHIBIT

Dear Ms. Ballantyne:

I am alarmed by the money and effort being wasted by Avoca School District NO. 37 in its relentless attempt to dispose of Karen Horwitz. It is a relief to know that she has returned to the classroom. I hope that her return brings this unfortunate incident to a close.

[redact.] our eleven year old son is in Ms. Horwitz's class this year. Her ability and efforts with [redact.] have made a real difference in [redact.] work as well as his attitude about school. She has accomplished more with [redact.] in one year than [redact.] previous 5 teachers combined.

At the beginning of this school year Ms. Horwitz's [sic] asked to be in charge of [redact.] Special Services. The school administration agreed to let her run [redact.] program. This fact was confirmed at our review meeting on April 8 with Venette Biancalana, George Tuttle, Anita Friede, and Karen Horwitz. We are delighted with the results obtained by Ms. Horwitz. The decision to place [redact.] program in Ms. Horwitz's control was a good decision. Avoca School cannot afford to lose a teacher of her caliber.

While we are delighted that Ms. Horwitz has returned to the classroom, there are issues left unresolved that must be answered. As taxpayers, residents and parents we are your constituents. The Board of Education must act as our representatives with the School District to insure quality education, efficient spending and fair treatment of all concerned parties. This includes students, teachers, and parents. **C09340 7075**

I respectfully submit the following questions to the Avoca District No. 37 School Board. Closure to this incident cannot be accomplished without answers to these issues. Failure to address these issues can only be interpreted as an attempt to conceal the truth.

- Why did it take 3 weeks (beginning April 30) to find a doctor for Ms. Horwitz's physical checkup to allow her to return to the classroom? Surely the District health insurance plan has a list of approved doctors.
- Why did it take 2-1/2 weeks to inform the students and public of Ms. Horwitz absence from school?
- Why were attorneys used to inform Ms. Horwitz that she must see a doctor before returning to work?
- Did the school staff and administration lie to Ms. Horwitz's students concerning her absence and whether legal action was pending?
- Who actually wrote and signed the letter dated April 24, 1998 bearing Rachel Palmateer's signature
- How much of our money has been spent with lawyers pursuing the dismissal of Ms. Horwitz
- Why does our Board of Education deny requests made by the Wilmette Public Library for a copy of our budget?
- Finally, this is a formal request for copies of the Avoca School District Budget for the last 2 years, plus next year. The copies shall include line item detail of income and expenditures made for 1996/7 and 1997/8, including dates and vendor names for transactions. The 1998/99 budget shall include projected line item detail.

I wish I did not have to make these requests. I wish I had enough confidence in the Board of Education to trust that they were doing a good job. However, my trust has been shattered. It sickens me to watch abuse of power by the School District. It sickens me to know that my children are pawns in your political struggle. I am disappointed that we

must remind you that you serve us first, and that the constituents are watching your performance. You have forgotten your job.

Children first,
s/[redacted]

C09341 7076

V.30 RC7357-8

To: Karen Horwitz
From: District 37 Board of Education
Date: February 16, 1998

Each of the Board members has reviewed the materials presented by you at our January 18th, 1998 Board meeting. We have met and reviewed the materials and have reached a consensus as to how to approach the current problem.

We have all agreed that a resolution must occur and that the current situation cannot continue. We feel it is in the best interest of everyone involved to find a way to begin to work with each other. To accomplish that goal, both the Administration and you must want to find a solution and agree to use a good faith effort to solve our ongoing problems.

We are not going to set forth judgement [sic] on you or the Administration or attribute any responsibility to either party at this time. However, we are asking both the Administration and you (Karen) to make a concerted good faith effort to enter into conflict resolution process, whereby a third party intermediary would attempt to facilitate a resolution of the conflict and to reestablish a good-working relationship between you and the Administration.

C07257 **7177**

What we cannot and will not do is get into the type of investigation that you requested in your materials. First, we do not feel the material warrants such an investigation and second we are not, as a Board, about to disrupt the fabric of our school community.

The reestablishment of a good working relationship with the administration is our goal. If both sides are willing to proceed and resolve the breakdown in communications

through conflict resolution, we as a Board wish to move forward immediately by selecting a qualified mediator.

We are hopeful that we can move forward and put this behind us. We are also hopeful that you (Karen) remember that the reason you are here is because of your love for teaching children. However, be advised that the current state of relations between you and the Administration is unacceptable. If the process fails, the Board will then find it necessary to revisit the situation and take further action.

We as a Board would like an answer as to whether you are prepared to proceed with what we collectively feel is the only alternative to put this conflict behind us.

7178

C07358

Petitioner's Appendix G

CONSTITUTIONAL PROVISIONS AND STATUTES

Due Process Clause under the 14th Amendment, U.S. Constitution

Free Speech Clause under the 1st Amendment, U.S. Constitution

Age Discrimination in Employment Act of 1967 (ADEA) 29 U.S.C. § 623, under the U.S. Equal Employment Opportunity Commission (EEOC)
29 U.S.C. § 623 (a) & 29 U.S.C. § 623 (d)

PROHIBITION OF AGE DISCRIMINATION

(a) It shall be unlawful for an employer-

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

Title VII of the Civil Rights Act of 1964 (Title VII) Pub.L.88-352, §704, 78 Stat. 257, as amended, 42 U.S.C. §2000e-2(a), Sec 2000e-3(a), which prohibits employment discrimination based on race, color, religion, sex, or national origin;

the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;

the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older; **29 U.S.C. § 623**

Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and

the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies

Illinois Constitution, Article I, Bill of Rights

SECTION 1. INHERENT AND INALIENABLE RIGHTS

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed. (Source: Illinois Constitution.)

§ 1. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. (Source: Illinois Constitution.)

§ 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense. (Source: Illinois Constitution.)

§ 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly. (Source: Illinois Constitution.)

IILINOIS SCHOOL CODE: (105 ILCS 5/)

Illinois School Code (105 ILCS 5/34-85) Sec. 34-85 (2006) If a hearing officer fails to render a decision within 3 months after the hearing is declared closed, the State Board of Education shall provide the parties with a new list of prospective, impartial hearing officers, with the same qualifications provided herein, one of whom shall be selected, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision. The parties may also select a hearing officer pursuant to the alternative procedure, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision. A violation of the professional standards set forth in "The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes", of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service, or the failure of a hearing officer to render a decision within 3 months after the hearing is declared closed shall be grounds for removal of the hearing officer from the master list of hearing officers maintained by the State Board of Education.

Illinois School Code (105 ILCS 5/24-5) Physical fitness and professional growth. (2006) The board may from time to time require an examination of any employee by a physician licensed in Illinois to practice medicine and surgery in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician and shall pay the expenses thereof from school funds. School boards may require teachers in their employ to furnish from time to time evidence of continued professional growth.

Illinois School Code (105 ILCS 5/10-20.9a) (2006) Final grade Teachers shall administer the approved marking system or other approved means of evaluating pupil progress. The teacher shall maintain the responsibility and right to determine grades and other evaluations of students within the grading policies of the District based upon his or her professional judgment of available criteria pertinent to any given subject area or activity for which he or she is responsible. District policy shall provide the procedure and reasons by and for which a grade may be changed; provided that no grade or evaluation shall be changed without notification to the teacher concerning the nature and reasons for such change; and if such a change is made, the person making the change shall assume such responsibility for determining the grade or evaluation , and shall initial such change.

Illinois School Code (105 ILCS 5/24A-1) (2006) Purpose. The purpose of this Article is to improve the educational services of the elementary and secondary public schools of Illinois by requiring that all certified school district employees be evaluated on a periodic basis and that the evaluations result in remedial action being taken when deemed necessary.

Illinois School Code (105 ILCS 5/24A-5) (2006) Remediation Plan In all school districts the remediation plan for unsatisfactory, tenured teachers shall provide for 90 school days of remediation within the classroom. In all school districts evaluations issued pursuant to this Section shall be issued within 10 days after the conclusion of the respective remediation plan. However, the school board or other governing authority of the district shall not lose jurisdiction to discharge a teacher in the event the evaluation is not issued within 10 days after the conclusion of the respective remediation plan.